Canadian Centre for Management Development
Centre canadien de gestion

# RESPONSIBLE GOVERNMENT:

## CLARIFYING ESSENTIALS, DISPELLING MYTHS AND EXPLORING CHANGE

*Peter Aucoin, Jennifer Smith and Geoff Dinsdale*

Canada

The ideas and opinions expressed in this document are the authors' and do not represent the position of the Canadian Centre for Management Development.

For more information or copies, please contact the Research and University Relations Group of the Canadian Centre for Management Development

Telephone: (613) 947-3682
Facsimile: (613) 992-1736
E-mail: publications@ccmd-ccg.gc.ca

© Canadian Centre for Management Development 2004

**National Library of Canada cataloguing in publication data**

Aucoin, Peter, 1943-

Responsible government : clarifying essentials, dispelling myths and exploring change

Issued also in French under title: Le gouvernement responsable.
Includes bibliographical references.
Issued also on the Internet.
ISBN 0-662-35909-7
Cat. no. SC94-107/2004E

1. Representative government and representation – Canada.
2. Administrative agencies – Canada.
3. Cabinet system – Canada.
4. Canada. Politics and government.
I. Smith, Jennifer, 1950- .
II. Dinsdale, Geoff.
III. Governance Research Program (Canada)
IV. Canadian Centre for Management Development.
V. Title.

JL65.A92 2004 320.471 C2004-980005-1

104-03226/

# RESPONSIBLE GOVERNMENT:
## CLARIFYING ESSENTIALS, DISPELLING MYTHS AND EXPLORING CHANGE

*Peter Aucoin, Jennifer Smith and Geoff Dinsdale*

# TABLE OF CONTENTS


A Word from CCMD ..... 4

Introduction

The Purpose of This Publication ..... 7

Why Public Servants Should Read This Publication ..... 8

An Overview of Canada's Constitutional System ..... 11

- The Convention of Responsible Government ..... 11
- The Convention of Ministerial Responsibility ..... 13
- Parliamentary Government as Party Government ..... 14
- Civic Illiteracy and the Democratic Deficit ..... 15

Part 1: Responsible Government

The Origins of Responsible Government ..... 17

Key Points to Remember ..... 18

The Democratic Control of Government ..... 19

Key Points to Remember ..... 20

The One Rule of Responsible Government ..... 20

Key Points to Remember ..... 22

One Rule, but Many Possible Institutional Arrangements and Practices ..... 22

Key Points to Remember ..... 24

Part 2: Ministerial Responsibility

The Convention of Ministerial Responsibility ..... 25

- Democratic Control over Public Administration ..... 26

False Assumptions and Bad History ..... 27
Ministers and Public Servants ..... 31
Canada in Comparative Context ..... 33
Key Points to Remember ..... 34
Public Service Accountability ..... 35
Public Servants, Ministers and Parliament ..... 35
Public Service Anonymity under Stress ..... 37
Challenging the Traditional Doctrine ..... 39
Reaffirming the Traditional Doctrine ..... 41
The Bottom Line of Ministerial Responsibility ..... 45
Key Points to Remember ..... 47

PART 3: CHECKS AND BALANCES
Responsible Government and Checks and Balances ..... 48
The Crown ..... 50
Parliamentary Checks on the Executive ..... 52
Government and Opposition ..... 52
Party Government and Disciplined Political Parties ..... 54
Debates, Government Bills and Confidence Motions ..... 57
Party Government and the Electoral System ..... 58
The Senate ..... 59
Key Points to Remember ..... 62

PART 4: REFORMS
Proposed Reforms and What They Mean for Public Servants ..... 63
The Electoral System ..... 64
Diminishing the Powers of the Prime Minister ..... 67
Party Discipline and the Role of the MP ..... 71
An Elected Senate ..... 74
Public Service Accountability ..... 76
Direct Democracy ..... 79
Consensual Democracy ..... 80
Key Points to Remember ..... 82

ENDNOTES ..... 84
APPENDIX I: GLOSSARY OF TERMS ..... 88
APPENDIX II: QUICK FACTS ON EXECUTIVE GOVERNMENT AND PARLIAMENT ..... 94
APPENDIX III: ADDITIONAL RESOURCES ..... 96

# A WORD FROM CCMD

It is commonly said that Canada is suffering a "democratic deficit," that government does not operate the way citizens want it to. Flowing from this criticism, there has been growing debate about Canada's democratic and political institutions, including its public service. To be sure, discussion is part of a healthy and vibrant democracy, yet many fundamental questions remain unanswered. For example, how well-founded are criticisms of the system? Are the problems endemic to parliamentary democracies everywhere, or a result of practices and applications unique to Canada? Are the calls for reform well-conceived and their implications fully understood? Finally, how do proposals for reform affect the role of the public service and what is their impact on public servants?

Addressing these questions requires a strong research base that moves beyond anecdote and opinion to support informed dialogue, debate and decisions. The new Governance Research Program *(http://www.ccmd-ccg.gc.ca/research/index_e.html)* of the Canadian Centre for Management Development (CCMD) seeks to build a foundation of knowledge and generate must-read research that is honest, fact-based and of indispensable value to federal practitioners.

*Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change* is the first publication to be released by the Governance Research Program. It is authored by Peter Aucoin and Jennifer Smith, two of Canada's leading scholars in political science and public administration, and Geoff Dinsdale, Head of CCMD's Governance Research Program. Valuable insights and feedback provided by numerous scholars and public servants have further strengthened the work of the authors.

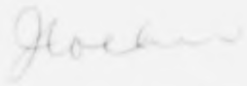
The purpose of this document is to explore the core of Canada's parliamentary democracy — responsible government. To borrow a phrase from the authors, responsible government is "... the singular, democratic hook on which the whole thing hangs." The issue is therefore not only of concern to scholars and politicians, but also of profound and fundamental importance for public servants and all Canadians.

By understanding responsible government, public servants can more fully appreciate the fundamentally important role they play in Canada's parliamentary democracy, and how they can best support and serve Ministers, Members of Parliament and citizens. Understanding responsible government will also help public servants to better ascertain what is required of them and why, what is proper and when. Through this knowledge, public servants will be better positioned to assert the values of the public service, support effective democratic accountability and, ultimately, strengthen Canadians' confidence in their government and democratic institutions.

Each part of this publication addresses a different component of the responsible government puzzle, with Part 4 providing an analysis of particular interest. Here the authors outline common proposals for reform of democratic institutions and practices, and the impacts they could have on responsible government. A short time ago this could have been viewed as a theoretical undertaking; recent developments indicate otherwise. Since taking office, the current Prime Minister has stated that democratic reform is one of his highest priorities. Indeed, while this publication was being prepared for printing, the Prime Minister announced a number of reforms and indicated that others are on the way. A testimony to the relevance and timeliness of this publication, the authors explore aspects of some of these very changes as well as other commonly suggested reforms—but they do not stop there. They continue on to examine how such reforms

could impact the roles and responsibilities of public servants as well as the tradition of Canada's professional, anonymous and non-partisan public service. We have not seen such an analysis before and view it as an especially noteworthy contribution.

CCMD is proud to make this important publication available and is confident that it will provide an enduring cornerstone for constructive reflection and dialogue.



Janice Cochrane
President

* * *

# INTRODUCTION

## The Purpose of This Publication

This paper has been written to address concerns about the current state of knowledge and understanding of responsible government. Its target audience is the public service, and it has been written for two reasons.

First, it is believed that many public servants, especially new public servants, would benefit from greater knowledge about the foundations of Canada's parliamentary system, not only as citizens but especially as state officials who participate in the exercise of government authority. Secondly, criticisms of some of Canada's central institutional arrangements and political practices have given rise to demands for political and institutional reform. These reforms could have consequences for public servants and the institution of a professional, non-partisan public service, consequences which public servants must consider as they advise Ministers on possible reforms.

This publication addresses these issues in four parts:

- The first part examines the core element of responsible government as the rule upon which everything else depends.

It considers the political logic and rationale for this rule and outlines how the single rule can accommodate many different kinds of institutional arrangements and practices.

- The second part examines the convention of ministerial responsibility, a related but separate and subordinate constitutional principle. It discusses how this principle is meant to operate, the considerable confusion that exists about its effectiveness and how it relates to the accountability of public servants.

- The third part examines the various checks and balances that exist within the system of responsible government as it applies to our parliamentary structures. It discusses their effectiveness as they are currently practised.

- The fourth part examines how proposed reforms to our major institutional arrangements and political practices could affect responsible government and public servants.

A few qualifiers are worth noting. The paper makes brief references to other political systems, some of which share our tradition of responsible government within a parliamentary system and others that do not; these comparisons serve to highlight what is distinctive about our Canadian institutional arrangements and political practices. It also examines the most common suggestions for reform but does not advocate any particular reform.

The publication examines institutional arrangements and political practices but it is not a textbook on how the Canadian system of government works. The many parts of the system that are not discussed are left out intentionally. Likewise, this publication does not pretend to be a "how-to guide" for designing, assessing or advising on reforms that potentially affect the constitutional convention of responsible government. Rather, it is a learning document, designed to educate and to encourage reflection and discussion.

## Why Public Servants Should Read This Publication

In 2003, the government issued a guide for Ministers and Ministers of State,[1] guidance for Deputy Ministers,[2] and a values and ethics code for the public service.[3] Each of these documents takes care to outline and detail the character of Canada's constitutional system of responsible government and

the respective roles and responsibilities of Ministers, Deputy Ministers and all public servants within this system. This trilogy of official documents comes at a critical time for both government and the public service as institutions of democratic governance. Public trust and confidence in these institutions has declined significantly over the past two decades.

The 2003 *Values and Ethics Code for the Public Service* begins with the following declaration:

> The Public Service of Canada is an important national institution, part of the essential framework of Canadian parliamentary democracy . . . . The *Constitution of Canada* and the principles of responsible government provide the foundation for Public Service roles, responsibilities and values. The democratic mission of the Public Service is to assist Ministers, under law, to serve the public interest.[1]

*Public servants need to know what all of this means for them.* This requirement applies not only to those who advise Ministers directly but also to the vast majority of public servants who rarely or never interact directly with Ministers, who work deep within the public service hierarchy or far away from headquarters. While the latter may see themselves as different from those public servants who work with Ministers in the rarified centres of government departments and central agencies, public service values and ethics apply equally to all public servants. Indeed, in several respects, a solid grounding in the values and ethics of the public service are most important to those who work on the front lines. They are the ones who interact directly, regularly and personally with citizens, as well as with a vast array of government contractors and suppliers.

The public service values and ethics articulated in the 2003 Code encompass requirements that one expects to find in all democratic political regimes, as well as particular requirements that emanate from the Canadian system of responsible government. This publication has been prepared to assist public servants in understanding the democratic principles of responsible government that underpin these specifically Canadian public service values and ethics. Public servants need an understanding of the democratic principles that underlie these values and ethics to be able to apply them to their public service work.

Federal public servants also need to be aware of the values that derive from the

Canadian model of a career or professional, non-partisan public service. A professional, non-partisan public service is not required by responsible government, but it has become an important feature of the Canadian government. For many public servants, the increasing pressures to accommodate ministerial direction and stakeholder demands in policy and program design, as well as citizens' priorities in service delivery, can place strains on their capacity to remain neutral and impartial. The increasingly influential role of political aides in governance and public administration over the past two decades requires career public servants to have a sound understanding of how responsible government and a non-partisan public service should balance the democratic and professional dimensions of public administration.

In their dealings with citizens and in their decisions on the use of government resources, public servants must be cognizant and conscious of the fact that they are agents of a democratic government, whether by serving citizens, enforcing laws with the authority of the state or managing public money. What they do has an effect on public trust and confidence in government and the public service. This is not merely rhetoric; studies show this to be a fact. *Studies also show that the quality of the institutions of government and the public service has a direct impact on the economic and social well-being of society.* The consequences for how well public servants perform their duties, in short, should not be underestimated.

The quality of the public service is determined by several factors, one of which is constitutional literacy. Public servants need to know how authority, responsibility and accountability work within our constitutional framework to be able to understand how they fit within the complex set of relationships between Ministers, Members of Parliament (MPs), public servants and citizens. Failure to understand what is fit and proper in these relationships could lead to bureaucratic abuses of power with respect to Ministers, MPs and citizens; a public service insufficiently responsive to elected authorities; usurpation by the public service of functions best performed by politicians or their political assistants; and/or a public service unable to articulate to elected politicians and citizens the value that a professional, non-partisan public service adds to democratic governance. Increasingly, there appears to be evidence of such shortcomings

throughout the federal public service. Not so long ago, constitutional literacy was taken for granted in the public service, or it was assumed that few public servants needed to be constitutionally literate. Public service values and ethics were also taken for granted, or were considered largely irrelevant to the practical tasks of getting the work of the public service done efficiently and effectively.

A great deal has changed in recent decades. We now know that values and ethics cannot be taken for granted. We also know that values and ethics are unlikely to be consistently followed by those who do not understand the principles upon which our democratic structures are established. Of course, knowledge alone is not sufficient but it is a prerequisite. In this age of constant change, the continuous learning that the public service undertakes — from top to bottom, from headquarters to field — must include a thorough grounding in the democratic and constitutional foundations of these values and ethics.

## An Overview of Canada's Constitutional System

### *The Convention of Responsible Government*

For many, perhaps even most Canadians, the term "responsible government" may mean nothing more than a description of a government that acts responsibly. In fact, in Canada, "responsible government" has a very precise constitutional meaning. It means that the government — consisting of the Prime Minister and the Cabinet — must always have the confidence of a majority of elected MPs in the House of Commons. This one rule is the foundation of our democratic system, from which everything else derives. The name we give to this rule is the "confidence convention." Under this rule, the government is responsible to the House of Commons for the exercise of the powers of government and governs only as long as it has the confidence of a majority of elected MPs — hence the term, "responsible government."

The Canadian system of government comprises three parts:

- The Crown — the Queen and the Governor General, her representative in Canada;

- **Parliament** — consisting of the Crown, the House of Commons and the Senate; and
- **The Judiciary** — the hierarchy of courts, with the Supreme Court at the apex.

The relationship between these three parts is the subject of the Canadian constitution, which itself consists of two parts: (i) written constitutional law; and (ii) constitutional convention (or unwritten rules and principles).

The written constitution (the *Constitution Act, 1867*)* vests executive powers in the Queen, whose authority is exercised by the Governor General on the advice of the Queen's Privy Council for Canada. It also provides for one Parliament of Canada, consisting of the Queen, the Senate (also known as the upper chamber or upper house) and the House of Commons, and makes specific provisions for the exercise of legislative power. (For quick facts on executive government and Parliament, see Appendix 2.) In particular, it prescribes whom the Crown can appoint as Prime Minister and Ministers. Constitutional convention consists of unwritten rules and principles that are known, understood and accepted by those who hold elected and appointed office.

Under the constitutional convention of responsible government, the powers of the Crown are exercised by Ministers, both individually and collectively. In formal constitutional terms, the Prime Minister and other Ministers are appointed by the Governor General. They are the active committee of the Queen's Privy Council for Canada, commonly referred to as "the government," "the Cabinet" or "the ministry."† By constitutional convention, however, the Prime Minister and other Ministers of the government hold office only as long as they possess the confidence of a majority of MPs in the House of Commons.

*If the government loses the confidence of the House, the Prime Minister has two options.* He or she

*It is important to note that Canada is a federal state, and the Constitution Act, 1867 is the core of Canada's written constitution. Canada's complete written constitution is a collection of 35 documents that are listed in the Constitution Act, 1982. Part I of the Constitution Act, 1982 is the Canadian Charter of Rights and Freedoms.

†In Canada, "the government" usually means the Prime Minister and his or her Ministers. (It can also refer to the entire executive administrative branch of government, as in the Government of Canada.) Before 1993, the terms "the government" and "Cabinet" were often used interchangeably, because all

must either *resign*, which entails the resignation of the entire ministry, so that a new government can be formed, or hold a *new general election*. If a new general election is held, the government does not resign but stays in office pending the outcome of the election.

"Confidence" can be determined by the government declaring a vote in the House to be an issue of confidence; by the Opposition moving a motion of non-confidence in the government; and by the status of legislation that comes before the House, since certain votes, for instance on items such as the Budget or Estimates of government spending, are always deemed to be votes of confidence.

### *The Convention of Ministerial Responsibility*

In reality, Ministers exercise the executive powers assigned to the Crown under the written constitution and statutory law. Formally, Ministers "advise" the Crown and the Crown must accept their advice. In Parliament, Ministers also exercise the exclusive right to recommend motions in the House of Commons for the raising and spending of public money. Most legislation that is passed by the House and Senate is legislation introduced by the government itself.

Ministers are collectively responsible for all decisions of Cabinet and for carrying out the government's policies established by Cabinet. Ministers are individually responsible for powers specifically assigned to them, as well as for organizations in their "portfolio" (including their departments, and any agencies, boards, corporations or commissions that report to them and, through them, to Parliament). In addition, Parliament regularly assigns specific powers to the Governor in Council (the term used when the Cabinet acts formally in advising the

Ministers of the government were members of Cabinet. In the ministry of former Prime Minister Jean Chrétien, Secretaries of State were part of the ministry, but not members of Cabinet. These Secretaries of State assisted Cabinet Ministers and were often referred to by the media as "junior Ministers." In forming his Government on December 12, 2003, the current Prime Minister has not used the Secretary of State positions in his ministry. However, he has appointed several Ministers of State to take on responsibilities assigned by him or to assist a Minister. Ministers of State do not have their own portfolio but are members of Cabinet. All Ministers and Ministers of State are, therefore, members of both the ministry and Cabinet. In addition, Parliamentary Secretaries have been sworn to the Privy Council, for the first time, and in certain circumstances will be required to adhere to Cabinet solidarity. They may be invited by the Prime Minister to attend a Cabinet or Cabinet committee meeting, but they are not members of the ministry or the Cabinet. In this paper, when we refer to "the government," we mean the Cabinet or ministry.

Crown), or to Treasury Board (the Cabinet committee established under the *Financial Administration Act* with specific powers with respect to administrative matters). Although a decision may formally be made by the Governor in Council, Parliament will normally hold responsible the Minister on whose recommendation a decision was made. Of course, a Minister is individually held responsible wherever Parliament has assigned specific responsibility to that Minister.

Ministers are responsible whether they exercise powers themselves or delegate them to their officials, explicitly or implicitly. *A Minister is responsible for everything that is done by officials in his or her name.* The convention of ministerial responsibility ensures that powers of government are assigned to an identifiable Minister, to the Cabinet or to Treasury Board so that a particular Minister can be held responsible, that is, named and blamed for alleged or real instances of maladministration. Furthermore, the same Minister has power to take corrective action as necessary.

While Ministers are responsible to the House of Commons, the Prime Minister alone has the constitutional authority to dismiss a Minister, that is, to require that a Minister resign. The House of Commons can call for a Minister's resignation, even censure a Minister, but has no constitutional powers either to force a Minister to resign or to require the Prime Minister to dismiss a Minister. Nor can the House impeach a Minister. Politically, of course, under certain conditions, the House of Commons can pressure a Minister to resign or cause the Prime Minister to dismiss a Minister.

### *Parliamentary Government as Party Government*

Responsible government constitutes a form of *representative* democracy. Canadians elect representatives (MPs) to the House of Commons. These MPs decide who forms the government. The device through which MPs perform this critical function is the political party. The device of political parties enables citizens to:

- cast an individual vote for a candidate who is identified with a particular political party, each of which has a designated party leader; and
- collectively choose the numbers of MPs elected from each political party in the House, and thereby determine which party leader heads the government as Prime Minister.

Not surprisingly, political parties have emerged as primary political organizations virtually everywhere there are parliamentary systems of responsible government. For that reason, we refer to our system of government as a system of "party government."

Political parties, however, have no constitutional standing of any kind. Nor are they a requirement of responsible government. And, although they are increasingly recognized in law for purposes such as the regulation of financial contributions to parties or election spending by parties, they are not a part of government. On the contrary, they are freely formed, private coalitions of citizens who band together to pursue shared political interests by having their candidates elected to public office in hopes of forming the government, or by simply advancing a policy agenda or promoting their definition of the public interest.

### *Civic Illiteracy and the Democratic Deficit*

With its combination of written law and unwritten convention, the Canadian constitution is undoubtedly somewhat complex. Furthermore, a number of longstanding *institutionalized arrangements* and *political practices*, which are not required by the convention of responsible government, have been introduced, adding a certain amount of ambiguity. Within this environment, there is increasing evidence of a continuing decline in "civic literacy" among citizens.[5] To some degree, this illiteracy extends to those who hold elected or appointed office, including public servants, as well as to those who report or comment on politics and government in the media.

Civic illiteracy, at least in some part, is due to an assumption that a number of existing institutional arrangements of parliamentary government, as well as certain political practices, are integral to responsible government. This widespread but incorrect assumption is compounded by increasing criticism of some of these institutional arrangements (including the electoral system, the Senate and the powers of the Prime Minister) and political practices (including party discipline and adversarial politics). In the absence of reform of these arrangements and practices, there has been a widening gap between the way government operates and the way citizens want it to operate, a gap some refer to as the "democratic deficit."

The problem of civic illiteracy is not merely an academic question. Criticisms of institutional arrangements and political practices have gained momentum as pressures for

reform. The danger is not that these institutions and practices may be reformed. It must be emphasized that the constitutional system of responsible government can accommodate a variety of institutional arrangements and political practices beyond those with which we are familiar. Rather, the danger is that a misunderstanding of responsible government may lead to a misdiagnosis of the problem and to the adoption of institutional and political reforms that undermine the democratic foundations of responsible government. Arrangements and practices must be reformed in a way that ensures that the confidence convention is fully respected as the central rule of responsible government. Otherwise, we would need to change the constitution itself and secure another form of representative democracy, presumably one in which the political executive is directly elected by citizens separate from the election of their representatives in the legislature.

* * *

# PART 1:
# RESPONSIBLE GOVERNMENT

## The Origins of Responsible Government

The origins of responsible government in Canada lie in its colonial past. The British colonies that lay north of the United States had enjoyed elected assemblies, or legislatures, since the end of the 18th century. However, these assemblies were weak institutions that clashed with British governors, whose actions they were unable to control except by denying them enough money to run competent administrations. The increasingly bitter stand-off between the two sides came to a head in 1837 in the rebellions in Upper and Lower Canada, following which the British sent John George Lambton, the first Earl of Durham, to investigate the problems and make recommendations to resolve them. One of Lord Durham's key recommendations was to establish responsible government, as it was by then known.

In his *Report on the Affairs of British North America* in 1839, Durham stressed that responsible government did not entail the separation of executive and legislative powers as in the American model, but instead kept the executive (i.e., the Cabinet) in the elected legislature:

> This entire separation of the legislative and executive powers of a State, is the natural error of governments desirous of being free from the check of representative institutions. Since the Revolution in 1688, the stability of the English constitution has been secured by that wise principle of our Government which has vested the direction of the national policy, and the distribution of patronage, in the leaders of the Parliamentary majority. However partial the Monarch might be to particular Ministers, or however he might have personally committed himself to their policy, he has invariably been constrained to abandon both, as soon as the opinion of the people has been irrevocably pronounced against them through the medium of the House of Commons.

As is evident from this passage, Durham squarely conceptualized responsible government as a solution to the stand-off between the British governors on the one hand and the elected legislature on the other. It detached the Crown from partisan politics and made parliamentary leaders responsible to the legislature for the advice they give to the Crown.

*Thus, the ultimate control of the executive is in the hands of the legislature, which is the singular, democratic hook on which the whole thing hangs.*

Durham also claimed the British had been practising responsible government since the Glorious Revolution of 1688, which seems a stretch. Although the concept of responsible government had been evolving since 1780, most historians agree that it was not adopted in Britain until 1832 — certainly not before then.

## KEY POINTS TO REMEMBER

*Responsible government has a democratic purpose and origin. It detached the Crown from partisan politics, and made the executive (also known as the Cabinet or government) responsible to the peoples' assembly of elected representatives (i.e., the House of Commons). This resolved the stand-off between the British governors and the elected assembly, and provided the democratic underpinning for Canada's parliamentary system of government.*

## The Democratic Control of Government

Like the former British governors, modern political executives are inclined to be imperial, that is, to overreach themselves unless they are checked by others. While they undertake consultative processes, they tend to resist limitations others might want to place on them in the name of democracy. Whether it is because of the need to be quick and decisive in military or diplomatic matters, the desire to be comprehensive in implementing major public policy initiatives or the determination to spend money to generate public support in the next election, political executives prefer to secure the greatest possible freedom to act as they see fit.

In the Western world, only two major democratic devices have been used successfully to restrain the power of the political executive. The first, crafted by the Americans, is a system of separation of powers, in which checks and balances are applied to the three branches of government — the executive, the legislative and the judicial. As explained by the authors of *The Federalist*, each branch is assigned not only its own set of powers, but also some checks on the powers of the other branches. For instance, the U.S. President nominates members of the federal judiciary, while the Senate has the power to veto the nominations. But, once appointed, federal judges are empowered to review the constitutionality of the actions of the legislative and executive branches in the course of determining disputes brought before them. The President can veto bills passed by the two houses of Congress, while the Senate has a veto over the President's nominees for the Cabinet, and so forth. The American system of checks and balances is intended to maintain the integrity of each branch that exercises the powers of government, as well as the integrity of the system overall.

The second device is responsible government, the convention that brings democratic control to the parliamentary system of government by making the political executive, individually and collectively, responsible to elected representatives. *The Prime Minister and Cabinet must retain the confidence of the majority of MPs to continue to govern.* Contrary to popular belief, there is a separation of powers in the parliamentary system. An independent judiciary exercises judicial power, and the exec-

utive implements the law and administers public services independently of the legislature. Nonetheless, the democratic heart of the system is the collective responsibility of the executive to the legislature.

At the Philadelphia convention in 1787, the framers of the American constitution considered having Congress select the president, but discarded the idea for the reason that it would make the chief executive beholden to the legislature. They wanted to establish a competent executive, not a weak one. From their standpoint, an executive accountable to the legislature seemed to be a weak executive.

Canadians, as citizens of a parliamentary regime of responsible government, know otherwise — an executive accountable to the legislature can be a very strong executive indeed. Some critics say too strong! They say that too much power is concentrated in the executive, especially in the Prime Minister, and that the government seems to do whatever it wants with few checks and balances.

In Canada, the current climate of doubt about the system of responsible government is fed chiefly by the suspicion that it is no longer the resolution to the problem of the imperial executive.

## KEY POINTS TO REMEMBER

*In the Western world, there are only two democratic devices used to restrain the power of the executive: the American congressional system of checks and balances and the British system of responsible government. The former separates the executive from the legislature; the latter makes the executive part of the legislature and responsible to it.*

### The One Rule of Responsible Government

It is worth emphasizing that the fundamental rule that drives the system of responsible government is the requirement that the government has the support of the majority of elected MPs in the House of Commons. This is the "confidence convention." Every other rule is a logical derivation from it or must conform to it. The confidence convention requires that a government that has lost the confidence of the majority of MPs either resigns so that a new government may be formed with

the confidence of the House or a new election is called. Under this rule, what cannot happen is nothing. A government needs the confidence of the legislature to govern.

The confidence convention is a convention because it is not written in the constitution but has been elaborated over the years by the conduct of political actors. The following statements describe the basics of responsible government in Canada:

- the Crown appoints as Prime Minister the political leader able to form a government that commands the confidence of a majority of the elected members of the House of Commons;
- the formal powers vested in the Crown under the written constitution are exercised on the advice of the Prime Minister alone or the Prime Minister and collectivity of Ministers that is the government (or Cabinet), which functions legally as the active committee of the Privy Council that aids and advises the Crown;
- the Ministers, individually and collectively, are continually responsible to the House of Commons, which in turn holds them to account; and
- a government that loses the confidence of a majority of members of the House either resigns, so that a new government can be formed according to the preferences of the majority of MPs, or advises the Governor General to call a general election.

As noted earlier, there are several things people imagine to be derived from responsible government — usually things that these people dislike — that in fact are not derived from it. For example, some associate responsible government with an appointed Senate; others imagine it means the Prime Minister alone selects Cabinet Ministers, and still others identify it with the single-member-plurality (SMP) electoral system, colloquially known as the "first-past-the-post system," in which the candidate with the most votes (a plurality, not necessarily a majority, of votes) is elected to the legislature. The fact of the matter is that responsible government need not include any one of these things.

## KEY POINTS TO REMEMBER

*Responsible government entails one rule — government is responsible to and must always have the confidence of the majority of elected members of the House of Commons.*

## MYTHS TO DISPEL

**Myth:** *Responsible government necessarily includes such institutions as an appointed Senate, the existing electoral system, the current practices of party discipline and the extent of the Prime Minister's powers to appoint Cabinet Ministers.*

**Fact:** *Responsible government does not necessarily include the current Canadian version of these institutional arrangements and political practices. To be sure, they affect the operation of responsible government in Canada, but they are not required by it.*

### One Rule, but Many Possible Institutional Arrangements and Practices

Today, the many countries that employ a system of responsible government rely on a wide variety of institutional arrangements. This is true even amongst the so-called "Westminster" systems, a category that includes Britain, Australia and New Zealand, as well as Canada. For instance, Australia and Canada are federal systems, while New Zealand is a unitary system; Britain, long the exemplar of unitary states, is moving toward federalism as it devolves legislative powers from the British Parliament to Scotland and Wales. Similarly, New Zealand does not have a Senate, while the Australian Senate is elected on the basis of the single-transferable vote (STV), which is a type of proportional representation (PR), and the British House of Lords might best be described as a work in progress, currently being a mixture of appointed and hereditary lords. In terms of the electoral system, both the British and the Canadian House of Commons favour the single-member-plurality (SMP) system, while the Australian House of Representatives uses the alternative vote (AV), a non-proportional system that allows vot-

ers in each district to rank order the candidates for office; the New Zealand Parliament uses the mixed-member proportional system (MMP) which, as the name implies, elects some members from single-member (non-proportional) constituencies and the rest from nation-wide (proportional) party lists.

The political systems of these countries vary in many other ways, including the practices of political parties. For example, in Australia, when the Labor Party forms a government, its parliamentary caucus chooses the Cabinet Ministers, whereas in Canada the Prime Minister alone makes these choices. Enough has been said, however, to substantiate the central point that the rule of responsible government coexists with a variety of institutional arrangements and political practices. In other words, responsible government is not an obstacle to institutional change, as long as the political executive is required to be responsible to the legislature by maintaining the confidence of a majority of members.

That is not to say responsible government has had no influence on the shape of political institutions or the behaviour of political actors. It most certainly has. For example, the dominance of political parties in Westminster-style systems is historically derived from responsible government, since the core rule of responsible government gives like-minded, elected politicians every incentive to hang together. Parliamentary leaders who managed to keep the support of the majority of elected MPs over time became the leaders of the party of the majority, or simply the "governing party."

Another criticism of responsible government is that it encourages an adversarial approach to politics, in which the governing party (or parties) defends its actions while the opposition party (or parties) attacks them. And it no doubt does, for the same reason that it encourages the establishment of disciplined political parties. Just as political actors who form the government are bound to follow strategies they think will keep them in government, opponents follow a strategy they think will decrease public support for the government.

To stress that responsible government allows a variety of institutional arrangements and political practices is not to be unmindful of its impact on these arrangements or on the behaviour of political actors. However, it is important to appreciate the astonishing variety that this one-rule system yields.

## KEY POINTS TO REMEMBER

*Responsible government can accommodate various institutional arrangements, powers and practices. As a result, countries with a system of responsible government are each distinct in terms of their head of state, electoral system, prime ministerial powers, upper chamber (Senate), party discipline and parliamentary procedures.*

* * *

# PART 2:
# MINISTERIAL RESPONSIBILITY

## The Convention of Ministerial Responsibility

Under responsible government, the government stands or falls as a single entity. Thus, responsible government requires that, collectively, Ministers are politically responsible to the House of Commons for the exercise of state powers.

However, Ministers are also legally responsible for the exercise of state powers. The assumption of legal responsibility for the exercise of state powers by individual Ministers occurred before the complete adoption of responsible government, so that Ministers could exercise state powers along with or in place of the Crown as the constitutional structures of British parliamentary government evolved. The powers of the Crown are thus exercised by an identifiable Minister, or group of Ministers (such as Cabinet acting as Governor in Council or a Cabinet committee with statutory authority like the Canadian Treasury Board). This convention ensures that there is always a Minister who is responsible to name and blame when things go wrong. Politically, the naming and blaming happens in the House of Commons; legally, it occurs in the courts of law.

The major institutional device to give effect to ministerial responsibility is the organization of ministerial

portfolios so that a single Minister is designated as the executive head of each department of government. This organizational model replaced the earlier model in Britain, when state organizations were directed and managed by a board of more than one Minister or Crown official. (The Canadian Treasury Board, organized as a *board of Ministers* with statutory authority, reflects the earlier tradition.) With this change, the government, headed by the Prime Minister, became a Cabinet of Ministers, each of which headed a department of government.

The convention of ministerial responsibility entails the following:

- Ministers are individually responsible to the legislature for the powers Parliament has assigned to the portfolio each holds;
- Ministers are individually responsible for their own actions, as well as for the actions of their subordinate departmental officials;
- Ministers answer questions put to them in the House of Commons and by its committees, as well as by Senate committees, on all subjects that fall within their responsibilities;
- departmental officials may be called as witnesses before parliamentary committees to answer questions on behalf of their Ministers; and
- Ministers can be individually named and blamed for maladministration, even censured by the legislature, but they cannot be removed from office by the legislature.

### *Democratic Control over Public Administration*

The democratic principle underlying the doctrine of ministerial responsibility, writes Sharon Sutherland, is to ensure that a particular Minister is "responsible for any act done by the Crown [the entire executive-administrative structure of government] that can be politicized by its pursuit in the House of Commons."[3] As a result, "the doctrine offers democratic control over bureaucratic administration, past and future."[4] *Democratic control requires both the authority of Ministers to act and ministerial responsibility for what is done.* The two dimensions are intimately connected: without ministerial authority, ministerial responsibility vanishes. Ministers cannot be held responsible for what has happened if they did not have the author-

ity to act in the first place; they cannot take corrective action if they do not have the authority to intervene in the administration of their portfolio. That is why the incumbent Minister must answer, even for what has occurred in the portfolio prior to his or her appointment; only the incumbent Minister has the authority to act to correct past decisions or their consequences.

The genius of the doctrine is that when Parliament confers on a Minister a specific responsibility for the conduct of public business, it also provides him or her with the statutory authority necessary to discharge that responsibility, thereby establishing the requisite conditions for ministerial responsibility. Ministers' responsibilities extend to everything done by their departments,* "including the actions of all officials under their management and direction, whether or not the Ministers had prior knowledge." There is no distinction between matters of policy and matters of administration.

A Minister's responsibility extends to Crown corporations or other agencies that operate with some measure of separate authority, or at "arm's length."† As long as these organizations are established as government organizations, they are subject to the ultimate direction and control of Ministers, and do not diminish the general responsibility of Ministers to answer and be held responsible in the House of Commons "about the way in which the power of the state is being exercised," as Nicholas d'Ombrain puts it.

## *False Assumptions and Bad History*

In recent decades, the doctrine of individual ministerial responsibility has come to be regarded by many MPs,

commentators and students of parliamentary government as thoroughly outmoded. Many critics seem to assume that there was a time when Ministers resigned when their actions or decisions, or those of their officials, came under attack in the House of Commons, or when the House of Commons could require Ministers to resign. The assumption is incorrect. The pattern of ministerial resignations has not changed since Confederation, nor has the House of Commons ever had the constitutional power to force a Minister to resign. Only the Prime Minister can dismiss a Minister. Nothing has changed or been altered over the years in this regard.

Ministers do resign under pressure or in anticipation of pressure. But the reasons have always had to do with the actions of the Ministers themselves, that is, with mismanagement, public misconduct or policy disagreements with their own government. "The opposition can force a resignation," Sutherland concludes, "only when it can make a case as to lack of personal ethics or probity of a kind for which the Minister's own colleagues and the Prime Minister *refuses* to extend the protection of collective responsibility, or where the Cabinet cannot extend solidarity because the government is in a minority."[12]

*The "force" that the House uses, in other words, is political pressure; it does not have the constitutional power to require Ministers to resign.*

In Canada, in addition to the solidarity that comes with party government, the inclination of Prime Ministers and Cabinets to support Ministers under attack is enhanced by the practice, begun at Confederation, of constructing the ministry so that it is nationally representative. This "representative imperative," as Colin Campbell characterizes it, means that many Ministers are selected, at least in part, because they represent an important aspect of Canadian identity, particularly a province or region.[13] In other words, many Ministers are protected, not because of their standing with the Prime Minister or their political party, but because they represent a particular segment of the Canadian population.

However, the protection that Cabinet solidarity affords a Minister under political attack in the House does not trump ministerial responsibility; it simply raises the political stakes. When a Minister stands firm against

his or her critics in the House, the Minister's opponents must either back down or treat the matter as an issue of confidence in the government.

Notwithstanding the critics of ministerial responsibility, a Minister is not always safe, even in a majority government situation. For example, over the past two decades several Ministers have been forced to resign from their portfolios when public opinion made the protection of these Ministers unsustainable. In a minority government situation, Ministers are more likely to be vulnerable to censure, but opposition parties must also carefully contemplate the prospect of an unexpected general election if they bring down the government in a vote of non-confidence.

While the House of Commons can defeat a government on a vote of non-confidence and thereby require its resignation or the calling of an election, it cannot remove or fire an individual Minister. The convention of responsible government does not allow a governing party to rearrange the leadership and membership of the government following a vote of non-confidence to prevent the government's resignation (or a general election); so, too, the House must vote confidence or non-confidence in the government as a single body. As Sutherland explains,

> The government must be able to control and protect its own membership *to be able* meaningfully to accept responsibility for its direction and impact as a government. It would not be able to govern as one administration if the Cabinet's membership could be changed by the House of Commons exercising an authoritative veto on individual Ministers.[11]

The inability of the House of Commons to require a Minister to resign is *not* the result of the enforcement of party discipline or of the concentration of power in the Prime Minister, nor is it the result of any change in the practice of ministerial responsibility. It is, and has been from the outset, part and parcel of the convention of responsible government.

Responsible government means that the Crown no longer has the prerogative to select or remove Ministers. They are selected *and* removed by the first Minister — the Prime Minister.* Ministers are thereby accountable to the Prime Minister who, in the Canadian tradition, has the sole power to appoint and dismiss them.† It fol-

*MPs who become Ministers are sworn in as Privy Councillors, a life time appointment. As a result, the Privy Council includes all Ministers from past governments.

†In Australia and New Zealand, Labour Caucuses select the members of the ministry when their party holds office, but the Prime Minister assigns them their ministerial portfolios.

lows, therefore, that when a Minister does not offer to resign or is not dismissed by the Prime Minister, responsibility shifts to the Prime Minister for continuing to support the Minister in question.*

Although the House cannot dismiss Ministers, opposition parties in the House still have every partisan incentive to pursue Ministers deemed to be vulnerable to charges of malfeasance or maladministration and to demand their resignation or dismissal. They are the politically weak links in the government. Persistent scrutiny in the House or in parliamentary committees often sheds more and more light on the actions in question or exposes a Minister's unwillingness or inability to provide an account that satisfies Parliament, the media and the public. Such scrutiny imposes a sanction insofar as it strikes at the reputation and perhaps the career prospects of a Minister, especially if the government's standing suffers in the court of public opinion.

Frequently, critics of ministerial responsibility assert that the House is "powerless" to secure ministerial responsibility, especially when there is a majority government. This assertion must be a continuing source of bafflement, if not bemusement, to Ministers who endure the constant scrutiny of the opposition parties in the House and unwelcome media coverage, as well as the potential for demotion or dismissal after the public pressure is off the government itself.

Over the past decade, a fractured opposition and tight party discipline under a majority government have undoubtedly combined to diminish the ability of the opposition to effectively hold Ministers accountable for the discharge of their responsibilities. *However, there is no evidence to support the view that Parliament once performed its scrutiny or accountability role significantly better than it does today.* Indeed, although the business of government has expanded considerably since Confederation, so too have the instruments used by Parliament and others to scrutinize the government. These instruments include longer sessions of Parliament; parliamentary committees that examine the work of

*In fact, really, this is more than the Prime Minister defending a colleague. It really involves the Minister under attack in responsibility for something that the Prime Minister has acted on for years.

Ministers and their officials; creation of an access-to-information regime; establishment of new parliamentary audit and review agencies, and expansion of the mandate of the most important audit agency, the Auditor General; televised parliamentary proceedings; and the use of the Internet for posting government plans and performance reports. Not all of these developments have fully achieved their intended effect; there may well be some aspects of parliamentary scrutiny that have diminished over the years. Nonetheless, Ministers today are at least as vulnerable to public scrutiny and exposure as they ever have been.

### *Ministers and Public Servants*

Among the critics of ministerial responsibility are those who argue that it is impossible for a Minister to be responsible to the legislature for the actions of departmental officials. These critics argue that Ministers do not accept responsibility for the actions of their officials anyway and that these public servants increasingly find themselves being held publicly responsible, sometimes by their Ministers, more often by legislative committees, for certain decisions or actions.[15] The following section discusses the question of public service accountability to Parliament. This section places the issue of ministerial responsibility for the administration of government departments in the context of the requirements of the convention of ministerial responsibility.

In his authoritative mid-20th century text on Canadian government R. MacGregor Dawson cited with approval the account offered by R. L. Borden in 1909 when he was the leader of the opposition:

> A Minister of the Crown is responsible, under the system in Great Britain, for the minute details of the administration in his department; he is politically responsible, *but he does not know anything at all about them*. When anything goes wrong in his department, he is responsible therefore to Parliament; and if he comes to Parliament and points out that he entrusted the duty to an official in the ordinary course and in good faith, that he had been selected for his capacity, and ability, and integrity, and the moment that man has gone wrong the Minister had investigated the matter to the full and punished that man either by degradation or dismissal, he has done his duty to the public. That is the way matters are dealt with in Great Britain, and it is in that way, it seems to me, that our affairs ought to be carried on in this country.[16] [emphasis added]

**Borden's view** was that ministerial responsibility meant that a Minister must investigate alleged problems, find remedies if that is what is required and report the actions taken to the legislature. It did not mean that the Minister must meet impossible standards of knowledge of internal departmental doings. Take away an older, harsher version of human resources management when Ministers still appointed and removed departmental officials and, 75 years later, leading constitutional expert J. R. Mallory mirrored Borden's view.[17]

Leading authorities on ministerial responsibility today, including Sutherland and Andrew Heard,[18] agree that a Minister is not expected to resign when political opponents ferret out administrative shortcomings in the department the Minister heads, but is expected to take corrective action and is personally responsible for that action. *Guidance for Deputy Ministers*, the government's most recent official statement on the subject, puts it this way:

> Ministers must be present in Parliament to account for the use of powers vested in them, including any errors committed in administration. However, ministerial responsibility does not mean that a Minister will be required to resign whenever an error is made. Taking action to remedy shortcomings and setting in place procedures to prevent a recurrence are of critical significance. If a departmental official makes a mistake, the requirements of ministerial responsibility are satisfied when the Minister answers in Parliament for the mistake and implements the necessary remedial action. This may result, for example, in disciplinary action and changes in reporting and approval processes.[19]

In her examination of ministerial resignations at the federal level from 1867 to 1990, Sutherland found that practice has conformed to the doctrine: there were no resignations for the reason of errors made by public servants during that period.[20] And for good reason. No public interest or democratic value would be served by a requirement that Ministers resign for the shortcomings of their public servants. Ministers should only resign or be dismissed when their personal decisions or actions are deemed beyond the pale. Who decides that a Minister's decision or actions are beyond the pale depends on the political dynamics at play at any given time.

### *Canada in Comparative Context*

Comparatively, the recent record of the Canadian Parliament in holding Ministers to account is stronger in some areas, weaker in others; moreover, an asset from one perspective may be a liability from another. For example, the Canadian House of Commons has traditionally scored very high compared with other Westminster-style systems in terms of the electoral turnover of its members. The competitiveness of elections in Canada has meant a continual stream of new MPs elected to the House. This turnover has brought in new blood and has kept the majority of MPs on their toes — few have safe seats. At the same time, however, this turnover has contributed to the relatively large number of Canadian MPs who, at least for some time after first being elected to the House, are inexperienced in the ways of the House, have minimal knowledge of government and its operations, and are prone to be subservient to their parliamentary party leaders.

Whatever the merits of the American system for constraining the executive branch of government, its provisions for executive accountability, by design, do not emulate the practices of ministerial responsibility. The executive branch is completely separate from the legislative branch: the President and Cabinet secretaries cannot be members of Congress. They are not responsible to Congress; the secretaries are responsible only to the President and the President is only responsible directly to the American electorate. To be sure, this separation of powers gives Congress more independent power than the Canadian House of Commons or Senate has. It requires the executive to do constant battle with Congress, over legislation, budgets and even executive/judicial appointments. These battles occur mostly in the labyrinths of House and Senate committees. The executive does not always have the upper hand; power is normally dispersed to many quarters; the executive branch administers public affairs, but the laws, regulations and programs emanate from the interplay of the two branches. However, especially on domestic policy, neither the President nor Cabinet secretaries face anything like the constant questioning from a partisan opposition in open, formal legislative arenas that the Prime Minister and Ministers must face in parliamentary systems. American Presidents carefully choose the audiences before which they make speeches and access to questioning is tightly controlled.

## KEY POINTS TO REMEMBER

*The core component of ministerial responsibility is that Ministers are politically and legally responsible for their actions as well as those of their officials. There is no distinction between responsibility for policy and responsibility for administration; Ministers are responsible for both. It also means that a Minister must have the authority to direct the organizations in his or her portfolio when things go wrong. This ensures that elected officials retain democratic control over the institutions and actions of the state.*

*The House of Commons can defeat a government on a matter of non-confidence and thereby require its resignation or the calling of an election, but it cannot remove or fire an individual Minister.*

## MYTHS TO DISPEL

**Myth:** *Ministerial responsibility is a hollow shell, unlike in the good old days when Ministers were held to account and resigned their office when things went wrong.*

**Fact:** *Ministers have never resigned for reasons of public service maladministration. Being responsible does not necessarily mean resigning, it means taking timely and appropriate corrective action to rectify problems.*

**Myth:** *Ministerial responsibility requires Ministers to know everything that is happening in their departments.*

**Fact:** *Ministers have never been required or expected to know everything that happens in their departments. Such a requirement is unrealistic and is not necessary for ministerial responsibility to function effectively.*

## Public Service Accountability

Under the constitution, public servants are the subordinates of Ministers. They are responsible and accountable either to Ministers and the Prime Minister, in the case of Deputy Ministers, or to their administrative superiors, in the case of all other public servants. Public servants have no separate constitutional persona. With the exceptions noted below, executive authority for public administration is vested in Ministers, either individually for the direction and management of their portfolios or collectively for matters that are deemed government-wide. The collective authority of Ministers is vested in the Cabinet or in the Treasury Board.

### *Public Servants, Ministers and Parliament*

As a matter of course, public servants make decisions for Ministers daily. With few exceptions, they make decisions on their Minister's authority, whether Ministers have delegated authority to them explicitly or merely implicitly. Nonetheless, Ministers remain personally responsible; they cannot devolve their constitutional responsibility to be accountable to the House of Commons to officials. Finally, the convention of ministerial responsibility makes no distinction between responsibility for policy and responsibility for administration.*

Over the years, however, Parliament has established an administrative management regime that provides formal, direct assignment of specific administrative powers to an independent executive agency and to certain public servants, mostly Deputy Ministers, as described below.

First, to ensure a professional, nonpartisan public service, Parliament has vested the authority to staff the public service, below the level of Deputy Minister and Associate Deputy Minister, in an independent executive agency, the Public Service Commission (PSC).† The PSC reports

directly to the House of Commons; it is *not* under the direction of a Minister or Ministers. Its mandate is to staff the public service based on merit. In other words, Parliament has removed the executive prerogative of Ministers in terms of appointing public service staff so that Ministers are not able to appoint public servants on a partisan, or patronage, basis.*

At present, the PSC sets the rules for staffing the public service but then delegates authority to staff the vast majority of positions to Deputy Ministers who may, in turn, delegate authority to other departmental officials. Having delegated its authority, the Commission then audits staffing by departments for compliance with the Commission's regulations and may take corrective action as required if it is not satisfied with departmental staffing. In other words, the PSC retains ultimate authority over the staffing of the public service.

Since the PSC has independent authority and reports directly to the House of Commons, ministerial responsibility does not apply to specific staffing decisions in the public service.

Second, in a few, select areas of administration, Parliament has assigned responsibilities and powers directly to Deputy Ministers to remove specific functions of public management from Ministers' discretion. These powers and responsibilities are assigned under the *Financial Administration Act*, the *Public Service Employment Act* and the *Official Languages Act*.

Third, for its part, Treasury Board has the authority to delegate directly to Deputy Ministers some of the regulatory administrative powers assigned to it under the *Financial Administration Act*, particularly in the areas of financial and human resources management. The Act itself provides for this delegation.

Fourth, in a limited number of areas, such as customs and excise, immigration, fisheries and health inspections, Parliament has assigned independent executive authority to departmental officials as "statutory officers." These officials, including some Deputy Ministers, have authority to make decisions that are essentially independent of their Ministers in areas where it has been deemed appropriate that deci-

sions concerning specific functions be made by an impartial official.

In the case of those few public service officials who possess direct statutory authority, they are personally responsible for the exercise of the powers conferred on them. Their Ministers, to whom they are otherwise subordinate, cannot direct or order them in their use of these powers. Ministers, accordingly, are not responsible for specific decisions made by these officials on their own authority. As with the PSC, Parliament has recognized that these decision-makers constitute exceptions to the convention of ministerial responsibility.

In the case of officials who have powers delegated to them by the PSC or Treasury Board, the Commission and the Board do not relinquish their authority through delegation; in the case of the Board, Ministers remain responsible to the House of Commons. For everything else, public servants operate exclusively with the authority of their Ministers and Ministers are responsible. Under ministerial responsibility, public servants are thus said to be "anonymous."

### *Public Service Anonymity under Stress*

Public servants are anonymous, by definition, precisely because they are the subordinates of Ministers.* With the few exceptions noted above, everything they do is done in the name of the Minister, who remains responsible for everything. In the case of professional, non-partisan public servants, there is an additional requirement that they not defend or promote the policies, decisions or actions of their Ministers.† Professional, non-partisan public servants speak publicly "on behalf of" their Ministers only in the restricted sense of answering factual questions or giving descriptive explanations. They should not act or be seen to act as the "agents" of Ministers by publicly defending their Minister.

Yet, especially since reforms to the parliamentary committee system in the 1960s, public servants routinely appear before parliamentary committees. Indeed, public servants now appear before such committees far more than Ministers do, especially before the Public Accounts Committee and similar committees that examine the past record of events, where public servants often appear without their Minister even present. *It has become customary to say that they provide "answers" to questions put to them in committees by MPs; they do not either defend or justify the actions of their Ministers.* *

In addition to the now routine appearance of public servants before parliamentary committees, a number of other significant developments have affected the anonymity of the public service.

First, there is the access-to-information regime, introduced in the 1980s. This regime opened the door for scrutiny of internal departmental documents that used to be inaccessible to the public, revealing not only the decision-making trail but also the administrative actions of public servants.

Second, and equally significant, since the 1960s, an increasing number of "Agents of Parliament," including the Commissioner of Official Languages, the Information Commissioner and the Privacy Commissioner, have been established to help MPs scrutinize the administration of public affairs. On the same front, the expansion in the scope of the Auditor General's mandate in 1977 brought public servants even more under the public spotlight. As a result of the expansion, the vast majority of audits are no longer confined to an examination of the financial statements to determine whether transactions comply with accepted accounting principles. Instead, they are "value-for-money" audits that examine and assess the management performance of departments and central agencies in achieving economy and efficiency in administration, as well as the procedures in place to measure effectiveness and value for money.

* Some authorities distinguish between answerability and accountability. The former implies a duty to provide information or factual explanation, the latter a duty to justify or defend one's actions or those of subordinates and to outline what will be done by way of correction (see Canada, Privy Council Office, Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees, December 1990).

Third, and more generally, there has been increased visibility of public servants as a result of media coverage; and, finally, there has been greater transparency brought about by the need for public servants to consult widely, often publicly, with citizens and interest groups.

For all these reasons, public service anonymity, as well as the cloak of secrecy that once characterized the work of the public service, has now been stripped to its constitutional essence: Ministers, and not their public servants, are responsible for the exercise of ministerial authority. This is true despite the fact that some politicians have taken to holding public servants publicly responsible for their decisions and actions. Over the past two decades, there have been notable occasions on which Ministers have allowed public servants to be held to account publicly. For their part, MPs in the House of Commons are increasingly attempting to hold public servants to account for administrative actions. On many of these occasions, public servants have been caught in the crossfire in partisan struggles between Ministers and opposition MPs.

### *Challenging the Traditional Doctrine*

The developments described above also reflect shifting ideas about public accountability in governance and public administration. The traditional understanding of ministerial responsibility as it relates to public servants began to be challenged in a concerted way in the 1970s. Both the Auditor General and the Royal Commission on Financial Management and Accountability (the Lambert Commission, which was established in 1979 in response to the Auditor General's criticisms of the practice of public administration) promoted the view that senior public servants, particularly Deputy Ministers, ought to be directly accountable to parliamentary committees for the management of their departments, including the implementation of policy and the provision of policy advice to Ministers. Because this argument had direct implications for the convention of ministerial responsibility, the Lambert Commission's report sought to establish a distinction between the administrative responsibilities of public servants and the political responsibilities of Ministers. In the aftermath of the Commission's 1979 report, the Auditor General actively sought this change in the accountability of public servants.

Public servants, he stated, "have to come out of the closet."[21]

This challenge to traditional doctrine was given additional credibility as a result of the House of Commons' acceptance of the recommendations made in the *Report of the Special Committee on Reform of the House of Commons* (the McGrath Report) in 1985. The purpose of reform, the committee stated, was "to restore to private members an effective legislative function, to give them a meaningful role in the formation of public policy and, in so doing, to restore the House of Commons to its rightful place in the Canadian political process."[22] One venue for a meaningful role was the committee system of the House and the possibilities it presented for strengthening scrutiny by MPs. Principally, the McGrath committee sought to ramp up the committees' role in questioning Ministers *and* public servants about policy and administrative matters, but ran headlong into the convention of ministerial responsibility, with its insistence on public service anonymity. The report therefore called only for a "slight modification" of the convention to include the concept of "deputy ministerial responsibility for administration."

In justifying its deviation from traditional doctrine, the report reverted to the view that Ministers cannot, in this day and age, be expected to meet impossible standards of knowledge of internal departmental doings. It concluded, "The doctrine of ministerial accountability undermines the potential for genuine accountability on the part of the person that ought to be accountable — the senior officer of the department."[23] *According to the report, Ministers should be held accountable in Parliament for policy and for any administrative matters in which they are active, while Deputy Ministers should be held accountable before committees for their administrative actions.* The report did not explain how Deputy Ministers could be expected, in this day and age, to meet impossible standards of knowledge of internal departmental doings. Nonetheless, the idea that public servants should be held directly accountable by parliamentary committees had received the *imprimatur* of an important parliamentary committee.

The hoped-for shift in the balance of power between the House and the gov-

ernment did not materialize to any significant extent in the wake of the McGrath Report. But things did begin to change for public servants as a result of the report's proposals, augmented, as they were, by the full flowering of the Auditor General's expanded mandate to conduct value-for-money audits, as well as by the introduction of the *Access to Information Act* in 1985. Public servants began to find themselves increasingly subject to criticism by MPs in parliamentary committees. At times, arguably, MPs were encouraged in this behaviour by Ministers, who publicly held their own officials to account for alleged maladministration. Furthermore, in one of the most publicized (some would say, infamous) cases, the so-called Al-Mashat Affair in 1991,[24] Parliament witnessed the most senior public servant, the Clerk of the Privy Council, siding publicly with Ministers against a public service colleague.* Most recently, the demand to hold public servants publicly accountable in Parliament has been propelled by a series of cases of maladministration, in which it appears that at least some responsibility rested squarely with public servants, if only for failing to refuse to take part in maladministration.

In any event, the situation at present is that the demand for direct public service accountability for administration is not easily dismissed by resort to the traditional interpretation of the doctrine of ministerial responsibility. Invoking this interpretation clearly does not get Ministers off the parliamentary hot seat. MPs, for their part, are increasingly unwilling to be satisfied with ministerial assurances that public servants have been held responsible by the application of internal government sanctions as appropriate. Of equal significance, House committees appear to want to flex their muscles; for example, in a report on one of the most recent cases, the Public Accounts Committee explicitly held the Deputy Minister involved to account.[25]

### *Reaffirming the Traditional Doctrine*

In June 2002, the Prime Minister announced that "new measures will be introduced to provide for more explicit accounting by deputies for the affairs of their department. Building on the framework established in the *Financial Administration Act* (FAA), this initiative will lead to enhanced accountability mechanisms in Parliament and in public for proper

*It might be argued that the so-called Al-Mashat affair is an anomalous case.

management practices." The Prime Minister's statement referred explicitly to the British practice, instituted in the late 19th century, of designating permanent secretaries (the equivalent of Canadian Deputy Ministers) as "accounting officers," with the responsibility to answer directly to the Public Accounts Committee for the financial administration of departmental funds voted by Parliament. The Prime Minister instructed the President of Treasury Board "to develop recommendations ... to enhance accountability for the expenditure of public funds," including "specific measures on the responsibilities and reporting requirements of deputy ministers and deputy heads with respect to their administration of the FAA."[20]

A year later, the government released an authoritative statement on the subject in the form of a document entitled *Guidance for Deputy Ministers*. The document discusses the subject of public service accountability in considerable detail. It begins by outlining the "multiple responsibilities" of Deputy Ministers, including those assigned directly by statutes governing different aspects of public administration. It then sets forth the traditional interpretation of public service anonymity:

> One of the Deputy Minister's fundamental responsibilities is to support the Minister's accountability in Parliament. Because Deputy Ministers are not primarily responsible for the exercise of the powers of the Crown, their relationship to Parliament is fundamentally different from that of Ministers. Deputy Ministers and other public servants appear before parliamentary committees on behalf of their Ministers to answer questions or to provide information on departmental performance that Ministers could not be expected to provide personally due to the level of detail or complexity . . . [They] do not have a public voice, or identity, distinct from that of their Minister, nor do they share in the Minister's political accountability. Non-partisan public servants have no role in defending the policy decisions made by the government or in debating matters of political controversy. To operate otherwise would risk politicization of the professional, non-partisan public service which must serve the government of the day, and would shift responsibility and power from Ministers, who are elected democratically, to officials who are appointed.[21]

The document acknowledges that Deputy Ministers have a "*special obligation* . . . in areas such as financial administration, program and service

delivery, and human resource management," and "should *personally appear* before parliamentary committees to give an *account of their stewardship* of the department". [emphasis added] At the same time, it reminds them to "ensure that their involvement with . . . [parliamentary] committees is coordinated by their Minister's [political] Office, which is responsible for overall relations with Parliament," and that they "have a general duty, as well as a specific legal responsibility, to hold in confidence certain kinds of information that may come into their possession in the course of their duties".[26]

The recognition that Deputy Ministers are obliged personally to give an account to parliamentary committees, especially the Public Accounts Committee and now the newly established Government Operations and Estimates Committee, is not new, even though the wording may be more explicit in places. As early as 1977, a document prepared by the Privy Council Office as an official submission to the Lambert Commission acknowledged that, since Deputy Ministers and other officials "answered directly on behalf of their ministers," especially before the Public Accounts Committee, they were "in a sense accountable before Parliament for matters of administration."[27] As a result of this practice, the 1977 document continued, it is possible "to distinguish between a deputy's accountability *to the minister* for all that occurs under the minister's responsibility, and the deputy's accountability *before parliamentary committees* for administrative matters so long *as they do not call directly into question the exercise of the Minister's responsibility*."[28] [emphasis added]

This document defines administrative matters as those that do not entail "matters of policy or matters involving political controversy." In these two areas, Deputy Ministers and other officials are to refrain from public comment, except to explain the policy in a purely descriptive or factual manner. "Matters of policy" is reasonably straightforward since policy is public knowledge, contained in statutes, regulations, official government directives and information on public service programs developed for citizens' use.

*In short, when asked questions on policy that invite commentary or evaluation, public servants can confidently defer the matter to their Ministers.* However, "matters involving political controversy" is less easily defined. Who decides

what is "politically controversial"? And at what point does an administrative matter become politically controversial? Asking Deputy Ministers or other public servants to provide a direct account separate from the account provided by Ministers runs the risk that the matter will become politically controversial in that officials will get caught in the crossfire between a Minister and the committee. Public servants also face the prospect of making matters politically controversial by refusing to answer questions without being able to demonstrate how the question entails matters of policy — a classic dilemma for professional, non-partisan public servants. By adding "matters involving political controversy" to "matters of policy," the 1977 document recognizes that it is not always possible to exclude administrative matters from political controversy.

The 2003 *Guidance to Deputy Ministers* is perhaps more explicit than previous documents in explaining that Deputy Ministers and other public servants should appear before parliamentary committees "to give an account of their stewardship of the department".[11] Yet it continues to rely on the twin criteria of matters of policy and matters of political controversy to advise public servants what to avoid in their appearances before parliamentary committees. More significantly, it remains silent on the subject of the British practice of designating "accounting officers." Under the British scheme, an official designated as the department's or agency's accounting officer, usually the most senior public servant in the department or agency, would accept personal responsibility for all financial transactions when appearing before the Public Accounts Committee, except for transactions for which he or she has requested and obtained a signed ministerial instruction. The committee would be informed of these exceptions and provided with a copy of the Minister's instruction. In that way, accounting officers would not be confronted with the possibility of such transactions becoming politicized in the Public Accounts Committee, nor could a Minister blame his or her official if such transactions became politicized in the House of Commons. While there is nothing to prevent a Canadian Deputy Minister from asking his or her Minister for a signed instruction in instances in which they are not comfortable, the British scheme is an established protocol of British public administration, which is arguably a more effective instrument of good public management than an *ad hoc* request of a Minister by his or her Deputy Minister.

### *The Bottom Line of Ministerial Responsibility*

As things stand, there is precious little to stop MPs from naming and blaming individual public servants. While committees have no power to direct or to discipline public servants, they can and do impose sanctions of a kind by publicly criticizing public servants, with the trial by media that sometimes ensues. The governing party can use its control of committees, at least under majority government, to have its own MPs refrain from holding public servants directly to account. In recent years, however, the willingness of the governing party leadership to control its backbenchers has been tempered by the extent to which many MPs, including government backbenchers, seem to view anonymity as a shield intended to protect public servants from scrutiny. And sometimes Ministers, even Prime Ministers, will be less than enthusiastic about protecting public servants in controversial cases where they think the public servants should bear the brunt of public criticism for administrative shortcomings or wrongdoings.

In some countries, perhaps paradoxically, direct public service accountability to Parliament is viewed as strengthening ministerial responsibility rather than weakening it. The theory is that direct accountability of public servants alerts Ministers of administrative wrongdoings or shortcomings that otherwise would have escaped their attention, thereby enhancing their capacity to take corrective action. In other words, holding public servants directly to account in Parliament is viewed as helping to secure democratic control by Ministers; it does not undermine their control. In New Zealand, reforms were undertaken based on this view as part of a conscious design to strengthen public accountability. Making the administrative heads of departments directly responsible to Parliament for administration was seen as enhancing ministerial responsibility generally. In Australia and Britain, the theory was roughly the same, although there was less willingness to admit to any change in the traditional understanding of the constitutional doctrine of ministerial responsibility.

*In any event, the bottom line for public servants in Canada, as elsewhere in Westminster-style systems, is that Ministers ultimately remain responsible to Parliament for public administration.* And, even in countries where public servants are

held directly to account in Parliament by MPs, neither the House nor its committees can direct or discipline public servants. As in Canada, public servants remain the subordinates of Ministers. At the same time, it bears repeating, neither the House nor its committees can direct or discipline an individual Minister. Ministerial responsibility requires that the House be able to determine who is responsible when things go wrong: no more, no less.

## KEY POINTS TO REMEMBER

*Evidence suggests that Parliamentary committees increasingly seek to hold public servants to account for administration. But while these committees can question public servants, they cannot discipline them or direct them to take corrective action. Public servants remain the subordinates of Ministers.*

*As long as Ministers retain ultimate control over the bureaucracy, public service accountability "to" or "before" Parliament need not necessarily undermine ministerial responsibility; in fact, some argue that it can strengthen it by bringing administrative shortcomings to the attention of the Minister responsible.*

## MYTHS TO DISPEL

**Myth:** *Ministerial responsibility is a shield designed to protect public servants from personal responsibility for their decisions or actions.*

**Fact:** *Ministerial responsibility does not shield public servants, but rather ensures that Ministers retain democratic control over the decisions of the state.*

**Myth:** *Anonymity is critical for all aspects of public service work. Anything that reduces anonymity undermines ministerial responsibility.*

**Fact:** *Public service anonymity only requires that public servants refrain from defending or promoting the policies, decisions and actions of Ministers.*

* * *

# PART 3:
# CHECKS AND BALANCES

## Responsible Government and Checks and Balances

Checks and balances is an American phrase that holds a specific meaning in terms of the American constitution. As indicated earlier, constitutional levers are available to each branch of the U.S. government to protect themselves against aggressive moves from the others, and to maintain the integrity of each branch and the integrity of the system overall. For students of government, the term suggests a system of government in which political power is dispersed rather than concentrated, scattered over many offices rather than concentrated in a few or even one. It also conveys the idea of a balanced system in which no one branch or office can dominate the rest.

It is not readily apparent that the idea of checks and balances can be transferred usefully to a model based on responsible government. After all, responsible government is often lauded for producing "strong" majority governments that can get things done. On occasion, this form of government has been called an "elected dictatorship."[1] The implication is that governments with small majorities or minority governments are "weak" and therefore undesirable.

However, in that checks and balances speak to the danger of the concentration of too much power in too few hands, they are as relevant to the Canadian system as to the American system.

In Britain, the convention of Ministers' collective responsibility to Parliament, and the rule that they must have the confidence of the majority of seats in the House, evolved between 1780 and 1832, the year in which passage of the first *Reform Act* extended voting rights to a portion of the middle class. That year, the governmental centres of power included the Crown, the Prime Minister and Cabinet, the House of Lords (the upper chamber) and the House of Commons. The monarch was still very much a player in government and the House of Lords was a daunting institution, the independence of its members fully secured by the principle of primogeniture — the feudal right to succession of first-born males. When an eldest son inherited his father's title, he also gained a seat in the House of Lords. Furthermore, the upper chamber was equipped with a veto on all legislative measures.

For its part, the House of Commons was entering its so-called golden era, a 30-year period in which it would prove hard for parliamentary leaders to maintain enough support to stay in office for any length of time. Generally speaking, elected members were more independent than they are today, and some held on to their seats for a long time. Political parties were still developing and elections were amateur affairs that did not require the kind of organizational skills political party machines need today. Birch records that, between 1832 and 1867, ten governments were defeated and not one government lasted the life of a Parliament; in only two instances did the Prime Minister secure dissolution of the House followed by a fresh election; in the other eight, the Prime Minister resigned, along with his government, and was replaced by another Prime Minister and government.[7]

Meanwhile, in the Province of Canada governments were falling like tenpins in the decade preceding Confederation. Indeed, instability was one of the key reasons why the province's political leaders were prepared to pursue Confederation.

The checks and balances that are in place in Canada today to act as counterweights to the executive — the Prime Minister and Cabinet — are the same as the ones in Britain in 1832: the Crown, the House of Commons, and the upper chamber (the Senate). The

question is how effective they are compared with the original British model and with other systems today. The answer for each counterweight — the Crown, the House of Commons and the Senate — is lighter, lighter and lighter, as elaborated below.

## The Crown

Since Canada is a constitutional monarchy, the Queen is the head of state in whom full executive power is vested. When the Queen is not in Canada, she is represented by the Governor General, who exercises the legal powers of the Crown on her behalf. For the most part, the Governor General exercises these powers "with the advice" or the "advice and consent" of the Queen's Privy Council for Canada.

The executive power of the government is extensive. It includes a vast array of powers, including the power to appoint Lieutenant Governors of provinces, Senators and federally-appointed judges; command of the Canadian armed forces; assent to legislation; and the power to dissolve Parliament in preparation for a new general election. Under the constitution these powers are exercised by the Crown on the advice of the elected government of the day. At issue is whether the convention leaves any discretionary decision-making room in the hands of the Crown, that is, room not to follow the advice of the government and instead to do something else. *If the Crown is to serve as a check on the government of the day, it must possess a discretionary power.* Otherwise, it is simply a rubber stamp of the government's actions.

The question of the Crown's discretionary or reserve power usually arises in connection with dissolution, that is, whether the Governor General is obliged always to grant a Prime Minister's request to dissolve Parliament in preparation for a general election, no matter how outlandish and self-serving the request might seem. Canada's foremost constitutional expert, Eugene Forsey, argued that there is a reserve power to refuse such a request, that it has been exercised before, and that it must be recognized and retained as long as the parliamentary system of responsible government is retained. Forsey viewed the reserve power to refuse the advice of Ministers on dissolution, or anything else for that matter, as the Crown's instrument to protect the constitution from the predations of wily politicians. Here

is a typically stout Forsey sentence on the matter:

> [If] a Prime Minister tries to turn parliamentary responsible government into unparliamentary irresponsible government, then only the Crown can stop him; only the Crown can keep Government responsible to Parliament and Parliament to the people; only the Crown can prevent Parliament from degenerating into a rubber stamp for the Prime Minister, elections into mere plebiscites — plebiscites whose verdict the Prime Minister accepts only if it suits him — only the Crown can prevent the Prime Minister, prime servant, from degenerating into a prime despot, the whole process into an elaborate farce, swindling the public at the public expense, with the public helpless to protect itself. [4]

Forsey outlined a number of scenarios that the head of state can help the country to dodge, among them a Prime Minister who loses an election yet refuses to resign from office; a Prime Minister who loses a vote of confidence in the House but then refuses to advise the Governor General to dissolve the House and call an election; or a Prime Minister who drops to a minority of seats in the House following an election, immediately loses the confidence of the House, and asks for and expects to get an election called immediately. The bottom line in all of these situations is a Prime Minister who refuses to face defeat, and tries anything and everything to avoid it.

Forsey's credibility as an authority on these matters notwithstanding, many Canadians today would find these scenarios unthinkable. Thankfully, they are not used to seeing Prime Ministers act unconstitutionally and naturally would regard such concerns as overblown. Furthermore, they might view the exercise of the reserve power of the Crown as undemocratic because the Crown is not an elected institution. As a result, the reserve power of the Crown does not represent much of a check on the government in Canada today, and is certainly not comparable to the power of the Crown in Britain in 1832 or perhaps even in contemporary Britain. It is not much of a check in Australia, either, and for the same reason — the lack of legitimacy. *Yet the system of responsible government needs a head of state with enough independence to withstand a determined government's assault on the constitution, although not*

enough to interfere in democratic politics. That is why republics like Germany that use the system of responsible government maintain a head of state — in Germany the office goes by the title of President* — that is separate from the head of government.

## Parliamentary Checks on the Executive

The fundamental rule of responsible government — that the government must maintain the confidence of the elected representatives in the House of Commons — is the basis of the legislature's check on executive power. It makes the system democratic because elected representatives in turn are accountable to citizens, at all times, but especially during elections. The extent to which this legislative check succeeds depends on several factors. These factors are described below under the following headings: government and opposition; party government and disciplined political parties; debates, government bills and confidence motions; party government and the electoral system; and the Senate.

### *Government and Opposition*

The Nova Scotia reformer Joseph Howe was persuaded to pursue responsible government by Lord Durham's 1839 recommendation, in part because he saw immediately that one product of the system would be a constitutional opposition. Today, we take Her Majesty's loyal opposition for granted, but it is worth pausing to see why Howe regarded this as such a welcome prospect. The existing system, he said, produced the "ridiculous" circumstance of a "government of a colony [that] is the opposition of the Commons."[5] In other words, the Governor and his advisers were outside of the Legislative Assembly and in no way responsible to it, but rather were opponents of the Legislative Assembly, resulting in a stand-off that immobilized government in the colony. But, under responsible government, Howe foresaw the development of a constitutionally based, focused opposition that could watch and control a government that was responsible to the legislature, remind it of alternative points of view in the electorate and perhaps occasionally aid it, but that would certainly not prevent it from prosecuting public

*The German office of President is traditionally useful to consider because the effort was made to design it on the model of the British constitutional monarch. For those who are interested in the design of the office of head of state in a republic, see Adam, Christopher S., "Germany," in Max Kaase, Vincent Bogdanor and William A. Joseph, Comparative Politics in the Twentieth Century, Massachusetts and London: D. C. Heath and Company, 1990, p. 165-241.

business with vigour and energy until it faltered under its own ineptness or widely unpopular actions.

Today, the opposition in the House is certainly focused on attacking the government of the day, but does it serve as an adequate check on the Prime Minister and Cabinet? The answer depends in part on the system of political parties — under responsible government, it seems that variety is the norm. In Canada, in the provinces and at the federal level, there have been a variety of systems and results in terms of the opposition's capacity to check the government. There have been two-party systems, one-party dominant systems, two-and-a-half-party systems (the half referring to a small third party) and multi-party systems. These systems have mostly produced majority governments, but there have been other arrangements, including:

- minority government (at the federal level, 1925–26, 1962–63, 1963–65, 1965–68, 1972–74, 1979–80);
- no-party government (at the federal level, the Union government, 1917–21);
- anti-party government (Manitoba, United Farmers of Manitoba, 1922–27);
- coalition government (Saskatchewan, the NDP and two elected members of the legislature, 1999–2003);*
- minority government based on a formal pact between the governing party and a third party (Ontario, the Liberal government and the NDP, 1985–87); and
- even a one-party government (New Brunswick, Liberal government, 1987).†

It can be argued that a two-party system yields the most focused opposition to a government because one party has every incentive to mount a clearly thought-out, sustained attack on the government; indeed, in these circumstances the opposition party is perceived to be the government-in-waiting. In contrast, in Canada at present there are four political parties in the House, leaving three in opposition, the largest of which is designated the "official opposition." If, as at present, the official opposition does not represent a

major force, the opposition is dispersed among many small parties. A number of observers have commented on the effect of such a fractured opposition, which is to diminish the capacity of the opposition to do its work in parliamentary committees, and to diffuse the impact of criticisms levelled at the government in Question Period.

The composition of parliamentary committees is expected to reflect the composition of the House. Even the smallest parties need to send members to sit on committees, but often they do not have enough members for that purpose. In that case, a lone party member sitting on a committee has to shoulder the same amount of work as members from a large party — a formidable task. And then there is Question Period.

Question Period is the public's primary window on the House, since it is often featured on the nightly television news.

*Question Period is the clearest demonstration of the opposition striving to make the government accountable to the House and the government striving to defend its positions and policies.* While there has always been criticism of the unruly, aggressive style of Question Period, as well as of the superficiality of the "discussion," multi-party opposition adds a particularly messy dimension to the scene. Many voices invariably produce many discordant, inharmonious criticisms and it is not always easy even for attentive citizens to discern the real meaning among them. In contrast, in countries like Australia and Britain, where fewer parties are represented in the legislature, the opposition is concentrated in a single, dominant party with the capacity to mount a concerted attack on the government. This situation lends clarity and cohesiveness to the opposition's criticisms by enabling the opposition to strike clear, carefully orchestrated notes in its efforts to check the government.

### *Party Government and Disciplined Political Parties*

The system of responsible government was in effect in Britain prior to the development of disciplined political parties. In Canada, both Lord Durham and Joseph Howe thought about responsible government in the context of parliamentary parties in 1839, which did not exhibit the discipline that is characteristic of parliamentary parties today. As indicated earlier, during the first three decades of responsible gov-

ernment in the British Parliament, the members of the House of Commons acted more like independents than faithful party supporters and, as a result, governments had difficulty maintaining enough support to stay in office for any length of time.

However, passage of the second *Reform Act* in 1867 extended the vote once again and spurred the emergence of organized political parties of the type that exist today. For one thing, the parties needed to be better organized to compete for the support of so many voters. For another, the incentive to gain and maintain office under the system of responsible government was all too apparent. In effect, it constructs a zero-sum game, in which the winner is the governing party and the loser is the opposition party or parties. A disciplined organization is needed to win an election, form the government and stay in office. In turn, the spoils of office are useful rewards for the organization's supporters. To use Howe's terminology, which is not in the least outdated, the government controls policy and patronage (meaning appointments to office). In contrast, the opposition parties have no access to such rewards, so parties have every reason to make disciplined efforts to compete for office. Moreover, as disciplined competitors, the opposition parties will work assiduously to hold the government accountable for its actions. Whatever they do to weaken the governing party can only enhance their own chances to gain office.

*The thorny issue is whether there is too much party discipline, that is, whether the effect of disciplined political parties is to weaken the extent to which the House is able to act as a check on the government's power.* The issue arises because of the fact that the Canadian political parties that have governed in Canada have been the most disciplined in Westminster-style systems. The system of responsible government sets up a winner-take-all game in terms of government and opposition, wherever it is in use.

However, the Canadian penchant for extreme party discipline is attributable to factors other than responsible government itself. Chief among them is the independence of the Prime Minister as party leader, which insulates him or her from his or her parliamentary caucus. The Prime Minister's

independence from the parliamentary caucus arises from the fact that the caucus no longer has the ability to choose or dispose of the party leader, as it once did.* Instead, the party leader is chosen by the party association, which encompasses all members of the party (also known as the extra-parliamentary party). Equally significant, the corollary to this practice is that the caucus cannot dismiss the Prime Minister either. (At the federal level, the extra-parliamentary parties choose and dispose of their party leaders in accordance with rules set out in their party's constitution.)

In addition to the rules that bolster the Prime Minister's independence from the caucus, the Prime Minister also has the final say in the timing of an election, subject to the approval of the Governor General in those particular circumstances, previously discussed, where the Governor General may exercise discretion. Therefore, he or she can always threaten to call an election to persuade recalcitrant MPs to fall into line behind the government. On the other side is the electoral insecurity of MPs. There are periods in Canadian federal politics when turnover is very high and close to half of elected members end up serving only one term of office. During such periods, the lack of experienced MPs also serves to strengthen the position of the Prime Minister. Finally, the Prime Minister has extensive appointment powers that can be used as rewards for those MPs who behave as the leader wishes and withheld from MPs who incur disfavour. As well as the sought-after ministerial appointments, these powers include the appointment of MPs to committees and the appointment to the position of parliamentary secretary. Further, the rewards can be promised for the period after an MP's retirement (or defeat), including the promise of Senate or diplomatic appointments.

No doubt, strong party discipline works to the advantage of the governing party. As long as a majority governing party maintains a disciplined, united stance, it is virtually impregnable against assault; otherwise, it might look like it is falling apart. At the same time, strong discipline introduces dimensions of rigidity and predictability into the system. Historically there is nothing, it seems, in between the two extremes — no option, for instance, of non-compliance with the party's official position on issues of lesser importance. There is just no tradition of behaviour that might serve to loosen up the system and give the opposition room to make an imprint on public policy by joining forces with government backbenchers to amend government bills.

In the past, the Canadian situation has often been compared negatively to that in Britain, where the governing party takes a more flexible approach to discipline and sometimes allows individual members to take positions independent of their party's.* The governing party indicates which measures it considers sufficiently important to require the loyal support of all members, which ones it would strongly prefer to have supported and which ones it is prepared to forego if necessary. It is important to keep in mind that the British House of Commons contains some 659 members, a factor that usually has given the government a considerable margin on House votes; many members hold safe seats (and thus are more likely to vote against the position of their party), so it is just as well that the government usually has a safe margin. In Canada, a more flexible approach to party discipline might make the government more receptive to opposition-sponsored amendments to government bills of lesser importance. Such amendments would be one way in which the opposition could conceivably act as a check on the government's power.

### *Debates, Government Bills and Confidence Motions*

The capacity of the opposition to make the government responsive to its criticisms depends, not only on the number of opposition parties and the extent to which they are disciplined, but also on the opportunities afforded by the rules in the legislature. In Canada, the rules of procedure used in the House of Commons offer the opposition some set occasions on which to tackle the government head-on, as it were, as well as a role in the consideration of government bills.

The daily Question Period is one set occasion that enables the opposition parties to hold the Prime Minister and Ministers accountable for their decisions and actions. Others include the debate on the Speech from the Throne in which a new government lays out its agenda, the debate on the Budget and debates on topics selected by the opposition itself. On these occasions, the opposition produces motions that state its lack of confidence in the government. Any government that loses a confidence motion clearly has to resign from office or call an election. For a minority government or a government with a slim majority, these occasions

*As noted later in the paper (page 71), the current Prime Minister has announced his intention to employ Britain's relaxed three-line whip system as traditionally used in Britain.

can be nerve-wracking. However, a governing party with a working majority will routinely defeat such motions, which gives votes on them a dreary predictability that hardly stands as much of a check on the government of the day.

The consideration of government bills offers the opposition a very different type of opportunity to serve as a check on the government's power. Generally speaking, in the Canadian House of Commons, government bills are scrutinized in legislative committees. The composition of the committees follows the composition of the House as a whole, which means that a governing majority party has a majority on each committee and generates the Chair of the committee, with the exception of the Public Accounts Committee, which is chaired by a member from the official opposition. However, the fact that the government has a majority on the committees does not mean that bills sail through them unamended. On the contrary, a committee sometimes holds extensive hearings on a bill, receiving the testimony of experts and interested groups who represent a variety of viewpoints. As well, a committee sometimes recommends amendments to a bill that are reported back to the House along with the bill. On the other hand, when government members form the majority on committees, the government rarely loses control of the committees: the government's practice is to demand discipline on the part of its committee members and there is little tolerance of rogue behaviour. Thus, if they are outnumbered, opposition members are unable to make much of a contribution to the substance of bills to act as a check on the government's power.

### *Party Government and the Electoral System*

As outlined above, under responsible government, a disciplined majority governing party can withstand the efforts of the opposition, not only to vote the government's measures down, but even to amend them. The electoral system contributes mightily to this state of affairs to the extent that it can transform a minority share of the popular vote in the general election into a majority of seats in the House of Commons, which it does most of the time.

Canada's electoral system is the single-member-plurality (SMP) system, colloquially referred to as the "first-past-the-post" system. In each electoral district, the candidate with the most votes (a plurality) wins; the winner does not need a majority of votes. In Canada's

multi-party system, there are almost always more than two candidates competing in each district, so winners are unlikely to get a majority of votes. Yet, if the leading party compiles enough plurality wins, the party is able to gain a majority of seats in the House of Commons without obtaining a majority of the total popular vote. That was the case in the last two general elections: in 1997, the governing Liberal Party received a majority of 51.5 percent of seats in the House but only 38.5 percent of the popular vote (total votes cast); in 2000, it obtained 57 percent of seats compared with 40.8 percent of the popular vote.

In multi-party systems, nowhere does the SMP system produce an allocation of seats proportional to total votes cast in an election. Only purely proportional electoral systems could do that. In countries that use partly proportional electoral systems, it would seem more likely that a party aiming to form the government would have to obtain the support of the majority of the voters but, in practice, most often no one party receives such widespread support. Instead, coalition governments are the order of the day (for example, in the Scandinavian countries, France and sometimes Germany). Of course, the opposition parties receive their fair share of seats in the legislature, resulting in a stronger opposition overall, one that can act as a stronger check on the government's power than is usual under the SMP system.

*Canada has used the SMP system for so long that it must seem like a necessary adjunct of responsible government. It is not.* Indeed, of the many countries that use the system of responsible government world-wide, most use other electoral systems. The SMP system is worthy of close attention in an analysis of responsible government in Canada. It can produce governing majorities in the House that are stronger than their share of the popular vote and oppositions that are weaker than their share of the popular vote. When this happens, the capacity of the opposition to serve as a check on the government's power is seriously eroded.

### *The Senate*

When considering the role of the upper house of the legislature in a system of responsible government as a check on the government's power, it is necessary first to deal with the issue of the confi-

dence convention. Basically, the Senate has no role in the confidence convention of responsible government. The government is not responsible to the upper house, and therefore it cannot defeat the government by passing a non-confidence motion or turning back financial measures, an action that is tantamount to an expression of non-confidence.

Having made such a pronouncement, it has to be conceded that in fact upper houses arguably have acted as confidence chambers. For example, the British House of Lords served as a serious check on the government until 1911, when its power to exercise a veto on government measures was transformed into a suspensive veto, that is, a veto of a bill that lasts only for a specific period of time. In 1949, the suspensive veto was shortened further. Since the Second World War, the House of Lords has served mainly as a chamber of sober second thought, applying considerable expertise in the revision of bills sent to it. While not a serious impediment to the government's agenda, it can slow the progress of government-sponsored measures and encourage modifications to them. It is worth noting that, from 1979 to 1992, during the Conservative governments of Prime Minister Margaret Thatcher, the mostly Conservative Lords voted against the government 8 percent of the time.

There is also the example of the Australian Senate, which happens to be elected. In 1975, the Senate did battle with the government by refusing to pass some of the government's financial bills. Stymied, the government found itself dismissed by the Governor General, who then called on the leader of the opposition to form a government and try to get the financial measures passed. The new Prime Minister accomplished the task and then led his party to victory in the next election. While this 1975 episode was a particularly sensational example, nonetheless, as an elected body, the assent of which is required for bills to become law, the Australian Senate has the capacity to serve as a check on the government and has demonstrated that capacity since its inception.

*The Canadian Senate is a chamber of sober second thought.* Its members are appointed by the government of the day but serve in office until age 75. In general, the number of Senators is determined on the basis of regional equality: each of four regions — the three Maritime provinces, Ontario, Quebec and the four Western provinces — is assigned the same number of Senators (24). In addition, the province of Newfoundland and Labrador is assigned six Senators and each of the Territories is assigned one.

The Senate reviews bills sent to it, holds committee hearings on issues of its choosing and, from time to time, undertakes in-depth inquiries of key policy matters and issues thoughtful reports. Still, few would regard the Canadian Senate as a serious check on the government, despite the fact that legally it possesses a full veto over measures sent to it (with the exception of amendments to the constitution, over which it wields only a suspensive veto) — although there has been the odd such moment in its history. For example, the Senate's refusal to pass the government's bill on free trade with the United States precipitated the 1988 general election. Being an appointed rather than an elected body, however, the Senate undoubtedly is out of step with the ethos of a modern democracy and has little democratic standing to challenge the government.

Less problematic, of course, is the idea of the upper house as a routine check on the government of the day, meaning the ongoing role of scrutinizing and possibly recommending amendments to government bills. Indeed, many Senators contribute a great deal to the governing process. Nevertheless, it is doubtful that a strong case can be made that the Senate serves as a routine check against the government. It hardly has the opportunity to do so, since the House often sends bills to it at the last minute and pays little attention to Senate reports.

## KEY POINTS TO REMEMBER

*Checks and balances address the dangers of the concentration of power in too few hands.*

*The confidence convention is the main check on the executive's power in the system of responsible government. However, the extent to which the House is able to act as a check on the government of the day depends on the institutional arrangements and political practices in play.*

## MYTHS TO DISPEL

**Myth:** *Checks and balances apply only to the American system of government.*

**Fact:** *Checks and balances speak to the danger of too much power in too few hands in any system of democratic government. In that sense, they are as relevant to the Canadian system as to the American system.*

* * *

# PART 4: REFORM

## Proposed Reforms and What They Mean for Public Servants

It has been stressed throughout that the one rule of responsible government — that the government must maintain the confidence of a majority of elected members in the legislature — is the democratic foundation of the system of responsible government. However, the institutional arrangements and political practices within which the rule operates vary quite strikingly from one country to another. For example, the office of the head of state, the electoral system, the powers of the Prime Minister, the extent of party discipline and the role of elected members in the legislative process, and the composition and selection of the upper chamber differ markedly from country to country and no one package of institutions is the same in every country.

This flexibility in systems of responsible government is useful from the standpoint of those who want to reform the Canadian system of government. They can urge a variety of changes in an effort to introduce more checks and balances into the system (among other objectives) while still honouring the rule of the government's need for the consent of

the governed as expressed by their elected representatives. However, this does not mean that proposed reforms would not affect the operation of responsible government. *Some proposals are bound to make the government's task of getting and maintaining consent harder.* As well, changes made to one institution will have ramifications for other institutions. It is essential to analyze proposed reforms in terms of their impact — intended or otherwise — on responsible government as well as on other institutions. This section examines the key proposals for reform current today and assesses each proposal in terms of its likely impact on responsible government and, where applicable, on public servants.

### *The Electoral System*

In Canada, electoral reform is about changing the SMP system into a proportional system. The advocates of PR seek many varied objectives, including more competitive political parties, more parties that have national support across the country, a healthy opposition in the legislature, higher voter turnout, voter equality in terms of the impact of each person's vote on the outcome of the election, and better representation of women and minorities. Whether PR would accomplish these objectives is not at all sure. Much depends on the type of PR that is chosen. Assuming a reasonably significant change toward proportionality, it is likely that, while PR would introduce more checks and balances, it would also affect responsible government by reducing the likelihood of majority governments.

The reason why is fairly straightforward. At the federal level, it is uncommon for one political party to receive more than 50 percent of the popular vote. Therefore, it is to be expected that under a PR system that yields a close match between a party's share of the popular vote and the number of seats they are allocated in the House of Commons, the leading party (with the largest number of seats) would not be able to acquire a majority of seats in the House and thus would form a minority or a coalition government. It would therefore require support from, or a coalition with, another party or parties to meet the rule of responsible government that requires a government to possess the confidence of a majority of seats in the legislature.

Consequently, changing the SMP system into one based on PR would not

require a change in our system of responsible government as much as it would require a change in response to the confidence convention of responsible government. Such a response could take different forms. The leading party might survive as a minority government that depends on the support, informally solicited, of one or more of the opposition parties or even of individual MPs from one or more of the opposition parties, as has been the case on a number of occasions in Canada (for example, the Trudeau Liberal government in 1972–74 and the Clark Progressive Conservative government in 1979). Or the required support could be elaborated formally, in a written agreement, as happened with the Peterson Liberal government in Ontario in 1985. It might also enter into a coalition government with another party (or parties) under an agreement that includes shared policy positions and the inclusion of one or more representatives from the other party in the Cabinet, as was the case in Saskatchewan from 1999 to 2003.

Arguably, any one of the above responses carries with it a democratizing effect in that it introduces more checks and balances into the system. *Under the current SMP system, the leading party in an election is usually able to convert a plurality of votes into a majority of seats in the legislature.* As already outlined, this happened in 2000, when the Liberal Party obtained 57 percent of the seats in the House of Commons with 41 percent of the popular vote. Under PR, the same percent of the popular vote would have gained the party somewhere around 40 percent of seats, short of a majority. The leading party would need to gain the support of other members in the House to form and maintain a viable government, resulting in a broader base of support in the House and in the electorate. This need for others' support can be construed as a check on a government's behaviour and, in turn, can be viewed as having a balancing effect on the governing party, without necessitating a change in the fundamental rule of responsible government.

### *What Would This Mean for Public Servants?*

A PR electoral system would invariably result in more political parties, along with more minority and/or coalition governments, and governments with shorter terms in office. For public servants, there are at least five issues to consider.

The first is that public servants would spend more time on transition planning. Less stable government with shorter terms leads to more transitions between governments. Because of the number of parties running for office, each election would also entail the creation of numerous transition books, since there would be less certainty as to election results in terms of the possible combinations of coalition governments. Furthermore, should more parties run candidates and get them elected, public servants would need to be more vigilant about the platforms and policies of all of these parties.

Secondly, the possibility of coalition governments suggests the details of the government's legislative agenda would be determined in post-election, inter-party negotiations. These negotiations would no doubt generate requests for information and analysis, including the costing of party policies, to serve as input to the coalition negotiations and agreement. This situation could create challenges for public servants in terms of responding to requests, yet remaining neutral and non-partisan. The challenge would apply especially to relations with Ministers, who may or may not be part of a coalition government following inter-party negotiations. In that case, a Minister's relationship with his or her department would be uncertain until a coalition government was formed. In such an uncertain post-election environment, protocols would be necessary to govern relationships between Ministers, party leaders, party transition teams and public servants. Protocols would help to ensure the public service remains neutral — in both practice and perception — and that no party, including parties in an incumbent coalition government, is given an unfair advantage. In New Zealand, for example, the adoption of a PR electoral system led the State Services Commissioner[3] to issue guidelines for public servants to follow to ensure that public service actions would not be construed as politically partisan.

Thirdly, the fate of each legislative initiative is likely to be uncertain under a minority or coalition government compared to its fate under a stable majority government. In a minority government context, legislative support cannot be assumed but needs to be actively nurtured and acquired. In the case of a coalition government, this uncertainty would be reduced if a written agreement were to spell out the legislative agenda of the parties in the coalition, but such agreements can be

[3] The official combines some elements of the Canadian clerk of the Privy Council and the chair of the Public Service Commission as head of the public service. See Chapman, 1998, 59.

easily derailed by the emergence of unexpected circumstances. In either eventuality, public servants would need to be very well informed on the positions of the principal political players, as well as on political developments generally.

Fourthly, under coalition governments, the government's members on parliamentary committees can be expected to reflect a more diverse range of views than under a majority government. Even if these members are highly disciplined in following the government line, they may well be more aggressive and even more partisan to ensure that public servants abide by the agreements of the coalition government; therefore, public servants might well face tougher scrutiny from government members of parliamentary committees than they do now.

Finally, a coalition government would likely diminish the discretion of individual Ministers to intervene in the administration or implementation of policies and programs. Since these policies and programs would be the product of a coalition of two or more parties, no-one would look kindly on a Minister changing the product as it was delivered, especially if it were changed to enhance the election prospects of the Minister's party. Given the extent to which Ministers exercise their right to direct the delivery of public services, this check on their power would constitute a major change in Canadian public administration.

It must be stressed that coalition governments can be very stable for long periods of time. In many European countries, for example, both centre-left and centre-right coalitions have had long runs. Although this prospect reduces the uncertainties described above, public servants would still need to be prepared to deal with the complex politics of coalition government (including the politics required to keep the coalition partners together).

### *Diminishing the Powers of the Prime Minister*

Concern about the concentration of power in the Prime Minister and his or her close advisors — that the Prime Minister may be too powerful in relation to the system of government as a whole — is long-standing. Indeed, in 1977 Denis Smith described the office as a presidential office in a parliamentary setting.[7] Over recent years, however, this concern seems to have become increasingly widespread.

Three possible ways to tackle this concern are: to reduce the number of

appointments that the Prime Minister is able to make; to introduce fixed terms for the House of Commons; and to enable the caucuses of parliamentary parties to remove party leaders, even when their party leader is the Prime Minister. All three proposals are bound to have the hoped-for effect of limiting the powers of the Prime Minister, thereby introducing checks and balances into executive powers.

When it comes to appointments, the idea is, not only that the Prime Minister could make fewer appointments, but that others would make more. This diffusion of appointment powers would reduce the Prime Minister's capacity to keep Ministers and government backbenchers under his or her control. It could also reduce the Prime Minister's capacity to influence the administration of public affairs by removing or reducing the Prime Minister's prerogative to appoint Deputy Ministers and Associate Deputy Ministers, as well as the boards of directors of Crown corporations and regulatory agencies.

The introduction of fixed terms would diminish the Prime Minister's capacity to threaten to call a snap election simply to take strategic advantage of a temporary weakness in opposition parties or to keep disgruntled members of the governing party caucus in line. It is a limitation on his or her power.

An even greater limitation would derive if the caucus could remove the party leader. Such a provision is found in some parties in other Westminster-style systems where, for example, recent Prime Ministers as prominent as Margaret Thatcher in Britain and Robert Hawke in Australia were removed by their caucuses. Under such a provision, the Prime Minister would need to cultivate the caucus by using levers such as the prospect of a Cabinet appointment. However, caucus could be given additional clout if it were able to select the members of the ministry, as is the practice in the Labour Parties in Australia and New Zealand.

*Proposals to scale back the Prime Minister's appointment power and to give the caucus power to remove the party leader (and/or select the members of the ministry) do not affect the fundamental rule of responsible government, although*

*they would affect its practice.*

In contrast, the proposal to institute fixed terms of office collides with the fundamental principle of responsible government, under which the government needs to maintain the confidence of a majority in the elected legislature to continue to govern, whereas fixed terms imply that the government can remain in place until its term expires. Any proposal to establish fixed terms, therefore, needs to be modified by the caveat that the confidence convention must be respected. In other words, should a government lose the confidence of the elected legislature during the term, it would be required to resign or call an election, just as it would with no fixed term in place. However, should the government be able to maintain the confidence of a majority of seats in the legislature during the term, then the fixed term would hold and an election would be held at the prescribed time.

In the general election campaign in 2001 in British Columbia, the Liberal Party made a "New Era" commitment to institute fixed terms. The Liberals won the election and, later that year, had the province's constitution amended to provide for elections on the second Tuesday in May every fourth year, beginning with the recent election. Accordingly, the next provincial election will be held on May 17, 2005 — unless the government loses the confidence of the legislature before that date and does not resign. In that case, an election is required immediately. Following the rule of responsible government, the provincial constitution provides that the Lieutenant Governor retains the power to "prorogue or dissolve the Legislative Assembly when the Lieutenant Governor sees fit."

Prime Ministers and Premiers naturally prefer elections to be held at a time that best suits their own election prospects. Since a fixed term would constrain their self-interest with regard to the date of elections, it can be considered an additional check to their power. And, as illustrated by the example in British Columbia, it can accommodate the core rule of responsible government. Of course, this innovation is recent, so the impact of a fixed four-year cycle on the behaviour of a government that loses the confidence of the legislature in the mid-term is unknown. Conceivably, a government that is desperate to cling to office might argue that the fixed term is more important than the confidence convention. If a premier refused to call an election, the Lieutenant Governor could dissolve the Legislative Assembly and call an election in adherence to the constitution.

*What Would This Mean for Public Servants?*

For public servants, fixed terms would introduce greater certainty and stability in the policy planning and administrative processes of government, especially under majority governments. Even when governments decided to use the immediate pre-election period for announcing or implementing vote-getting initiatives, the timing of such endeavours would be more predictable.

A provision within the governing party to empower the parliamentary caucus to remove a Prime Minister as party leader, thus forcing the resignation of the Prime Minister in favour of the party's new leader, would diminish the power of the Prime Minister in relation to Cabinet and government backbenchers. That being so, public servants would have to be more sensitive to the positions and views of Ministers and backbenchers than they are now. They would need to be well informed on the state of play in the governing party as it relates to the assessment of public policy considerations in their analysis and advice to Ministers.

Finally, in terms of changes in the appointment powers of the Prime Minister, a diffusion of appointment powers to the Cabinet or to individual Ministers would likely have little or no effect. But a diffusion of the appointment power beyond Ministers to an independent process could make agencies, boards and commissions that operate at arm's length from Ministers more independent of government and partisan politics. Public servants whose responsibilities include reviewing and monitoring the performance of arm's length government organizations and assessing their budgetary proposals would need to be more vigilant.

Some think that Deputy Ministers and Associate Deputy Ministers are too responsive to the personal-political agenda of the Prime Minister because he or she appoints them. A shift in the Prime Minister's power of appointment to a more independent process — like New Zealand's for example — would negate this perception. Furthermore, a more independent approach to staffing of the Deputy Minister cadre could help to reduce its ties to the Prime Minister and the Prime Minister's political staff, and thereby enhance the public service as a non-partisan and professional institution.

Diminution of the Prime Minister's power to appoint Cabinet Ministers would be certain to enhance the capacity of Ministers to act independently of

the Prime Minister, which would require public servants to be more responsive to the ideas and interests of individual Ministers, and to pay greater attention to the ideas and interests of Cabinet Ministers and Ministers' political staff. Finally, Ministers able to act more independently of the Prime Minister might want greater control over their Deputy Ministers. The experiences of both Britain and Australia are relevant, since neither country has bestowed the same degree of power on their Prime Minister as has predominated in Canada. Less centralization usually means greater freedom for individual Ministers and departments; on the other hand, it can also mean less attention to horizontal, government-wide, concerns and requirements.

### *Party Discipline and the Role of the MP*

The late Prime Minister Pierre Elliott Trudeau once sneered that MPs are "nobodies" as soon as they leave Parliament Hill, and somehow no one has felt quite the same about MPs ever since. The chief concern of MPs, including opposition members and backbench members of the governing party — collectively referred to as private members — is that they do not get to play much of a role in policy making. Many members, who began their political careers by thinking that they were elected to make laws — to legislate — become disenchanted when they find all they do is vote on bills drafted by others or act at the behest of others by having to conform to party discipline.

*It is important to stress that the portrait of MPs as "nobodies" is exaggerated.* One reason is that the parliamentary caucus meets *in camera* and backbenchers occasionally do influence the party's agenda and position on issues. Furthermore, as members of parliamentary committees, backbench MPs can contribute to legislation by voting amendments to it. Sometimes the government is prepared to accept amendments designed to improve the legislation. However, there is no doubt that private members are not principal players in developing legislation so much as they are disciplined players on their party's team.

Those who seek to enhance the role of the MP tend to favour one of two strategies. The first is to work on ways to change the parliamentary committee system. After all, these committees are the venue of the private member (since Ministers are not members of such committees). Presumably, giving more power to committees would

enhance the legislative role of private members. The second strategy is to pursue changes that loosen the grip of party discipline on private members and allow MPs more independence. The most common proposals in this strategy are to institute more free votes, to establish fixed terms and to relax the confidence convention. Each one of these proposals is examined below in relation to responsible government, beginning with the committee system.

The conundrum of parliamentary committees is rooted in the system of responsible government. For the most part, the composition of these committees replicates the composition of the House of Commons, which means that under majority governments the governing party is able to control the committees by contributing the majority of committee members. No matter how much power committees may be given — large staffs, more time to scrutinize bills, the ability to review draft bills or to review bills after first reading (that is, before the House votes on approval of the bill in principle at second reading) and so on — the government would still control the committees. There are some ways to strengthen the committees; for instance, using opposition members as Chairs might reduce the government's control and enhance the role of the private members who sit on them. None of them would affect the rule of responsible government, but they would make it more difficult for the government to maintain the confidence of a majority, and they would thus strengthen the checks and balances in the system.

The other strategy — to institute more free votes, along with fixed terms and a relaxed confidence convention — is a different story. This package is based on the premise that elected MPs ought to represent the views of their constituents first and foremost, before the party's views (leaving aside the issue of how an MP is to determine the views of his or her constituents). Since proponents of this concept also seek to loosen the imposition of party discipline on voting in the House, the proposed changes would undoubtedly have the effect of enhancing the role of MPs.

*Relaxed party discipline is the most significant part of this package.* Under it, the government could lose a vote and thereby appear not to have the confidence of the House. At issue is what counts as a defeat that does not signify a loss of confidence in government. According to one version, the definition of non-confidence in the govern-

ment should be restricted to motions expressly worded to that effect, in other words, to formal non-confidence motions. In contrast, the defeat of a government-sponsored resolution or bill (with the exception of those on key budget measures) would not require the government to resign or call an election.

It is not clear whether this proposal amounts to anything more than a call to clarify what is now a gray area of parliamentary politics. A government that loses a formal non-confidence vote sponsored by the opposition is clearly a government that needs to resign office or call an election, but defeat of government-sponsored legislation is more complicated. While votes lost on financial measures are always serious matters, there is a range of financial measures, some of which are more important than others. Under the existing system, a vote lost on a financial measure of any significance would undoubtedly trigger calls for the government to resign or call an election, followed by a debate in the context of heightened public opinion. This sort of debate is a democratic exercise of the first order. It is not clear whether relaxed party discipline, even if it wished to confine the convention to formal non-confidence motions, could wish away this debate *unless it is left to the government to define what types of votes, if lost, are votes of non-confidence.*

One way for the government to do this would be to institute the so-called "three-line whip," as the current Prime Minister announced the day he formed his government.[7] The three-line whip is for votes on government legislation or a government motion that the government considers a matter of confidence. The two-line whip is for votes on government legislation or motions that the government does not deem to be a confidence vote. The one-line whip is for votes on legislation or motions that the government does not deem to be matters of confidence and where the government allows its MPs to vote freely. Instituting the two-line whip would be new to Canada under this proposal.

The new system to classify votes with respect to the confidence convention is the key to this package of changes. Indeed, if, due to the introduction of the two-line whip, MPs got used to voting for reasons other than partisan solidarity, the "free vote," in which MPs are freed from party discipline and allowed to vote with their consciences, might lose the significance it is now thought to have. The proposal to establish fixed terms as a check on

the power of the Prime Minister would simply reinforce the effect of relaxed party discipline from the standpoint of the private member. In sum, this package of changes would likely enhance the role of the MP and introduce additional checks and balances into the system of responsible government. Depending on how the changes are implemented, this package need not affect the rule of responsible government.

### *What Would This Mean for Public Servants?*

Any combination of looser party discipline, more free votes, fixed terms and new system to classify votes with respect to the confidence convention would result in more active MPs, more distribution of authority and less concentration of power, which could be expected to have some direct impacts on public servants.

First, a looser approach to party discipline would mean that the passage of bills that are not crucial to the mandate of the government could not be taken for granted. Public servants would need to be much more sensitive to and informed of individual MPs' interests, views and circumstances to be able to frame advice for Ministers seeking support for legislative initiatives. At the same time, they would have to be more careful not to allow themselves to be used by Ministers to promote a particular agenda or to defend proposed legislation in parliamentary committees.

Secondly, more private members' bills — a likely outcome of looser party discipline — would mean more bills entering the legislative process independently of the government. In that context, public servants would have to anticipate the probabilities of MPs' individual initiatives as they affect the legislative agendas of Ministers both individually and collectively.

Thirdly, looser party discipline might result in more aggressive attitudes by MPs in interactions with public servants in committees, whether they are examining government legislation or reviewing and assessing the performance of departments.

## *An Elected Senate*

An elected Senate has long been an objective of some reformers, but the prospect often raises concerns that it would have a negative impact on the core rule of responsible government. The standard reasoning is that, as an elected body, the Senate would be entitled to demand that the government be held responsible to it, and no government should be made to be responsible to two elected bodies. The

Senate is, rather, intended as a check on the House of Commons as opposed to the government. It is structured on the basis of "representation by regions" and not, as the House of Commons is, on the basis of "representation by population." The government is responsible to the House because only the House is elected on the basis of representation by population.

Australia has an elected Senate that works within a federal, parliamentary system of government that is similar to Canada's. As noted earlier, in 1975 the Governor General of Australia dismissed the Labor government of Gough Whitlam, and then asked the Leader of the Opposition, Malcolm Fraser, to form a government. The events that precipitated this unusual action were rooted in the refusal of the Senate to pass the Labor government's budget. The Fraser government dealt with the budget, and then asked the Governor General to dissolve Parliament in preparation for an election. The request was granted, and the new government secured the largest majority in Australian political history. Despite this event, it must be stressed that no-one suggests the government should resign if it fails to get the Senate's support for legislative measures. However, there is understandable uncertainty about how the politics would play out if an elected Senate collided with the government over its actions.

Undoubtedly, an elected Senate would introduce some checks and balances into the system. The government rarely has a majority in the Australian Senate, which serves as an important check on the government's legislative measures — Senate committees are noted for their work in insisting on accountability through their review of departmental estimates. *That said, the key issue concerning the proposal for an elected Senate in Canada is the uncertain impact of another elected body on responsible government.* The only way to remove the uncertainty would be to be explicit about the powers of such a body.

### *What Would This Mean for Public Servants?*

Given the limited direct relationship public servants have with the Senate, it is often assumed that Senate reform would likely have a negligible impact on the public service. However, an elected Senate would introduce an element of unpredictability from the standpoint of the government, which

would find itself having to try to manage two elected bodies rather than one. Public servants would need to be vigilant about the interests, views and circumstances of Senators, especially as they relate to the promotion or defence of regional perspectives, where their claims would have the greatest degree of legitimacy.

In short, an elected Senate would mean more work for public servants. Senate committees are already viewed as well-informed and effective at their work. In an elected Senate with experienced Senators, public servants appearing before its committees could face even more rigorous questioning and scrutiny than they do now. The experience in Australia has been that Senate committees are more aggressive and thorough than House committees, partly because the government rarely has a majority in the Senate and partly because Senators have more time to devote to the role of scrutinizing the government's work.

### *Public Service Accountability*

Reforms toward direct public service accountability to Parliament by way of parliamentary committees continue to surface in Canada. From the Lambert Commission's efforts in the 1970s, to the McGrath Report's proposals in the 1980s, to the Prime Minister's request for proposals as recently as 2002, there has been a continuing desire to construct a new system of direct public service accountability based on the distinction between responsibility for policy and responsibility for administration. These demands have been paralleled by reform initiatives elsewhere. The so-called "new public management" that swept the Anglo-American democracies over the past two decades" posits that both Ministers and public service managers should be publicly responsible, albeit for different dimensions of public administration.

Squaring ministerial responsibility and public service accountability to Parliament requires clarity in the assignment of administrative powers and responsibilities to public servants, precision in the procedures governing the administration of resources and services, and transparency in the conduct and scrutiny of public administration. Some regimes have done better than others in these respects. However, while the waters of ministerial responsibility have to some extent been muddied in some places, nowhere has ministerial authority for administration of departments been reduced to the point where Ministers cannot direct and control the administration of public affairs. *This is the bottom*

*line of ministerial responsibility.*

To avoid the risk of even less accountability in the administration of public affairs, reforms that promise improved public service accountability to Parliament would have to avoid diminishing ministerial responsibility. Traditionally, Parliament has relied on assurances by Ministers (and the Public Service Commission) that internal controls and disciplinary procedures are in place and working as intended. However, over the past two decades, additional checks and balances have been added, including the access-to-information regime, expansion of the mandate of the Auditor General and the addition of other parliamentary agencies. While these instruments have assisted MPs in holding Ministers themselves to account, they have focused primarily on administrative matters as conducted by public servants. This trend has already introduced a form of direct public service accountability before parliamentary committees and has led some to demand formal recognition of the situation.

***What Would This Mean for Public Servants?***

As outlined above, public servants are already experiencing direct public service accountability for administration in the sense that MPs, and sometimes Ministers themselves, have at times held public servants to account for alleged or real administrative shortcomings or wrongdoings. Yet, except for the distinction between public service *answerability* before parliamentary committees and ministerial *accountability* to the House of Commons, no one has yet developed specific ways of distinguishing public service answerability for policy and public service accountability for administration. In the absence of any formal system, MPs in parliamentary committees decide for which matters they will hold Ministers or public servants accountable on a case-by-case basis. The effect of a formalization of direct public service accountability on public servants would be to make them publicly accountable in their own right.

For public servants, direct accountability for administration would mean not only describing or explaining what has happened with respect to administration in their department but also justifying why it happened and, failing that, accepting responsibility for administrative shortcomings or wrongdoings. However, even though parliamentary committees could hold public servants personally accountable, they still could not direct public servants to take cor-

rective actions or discipline them." Rather, the role of the committee would be limited to making the appropriate Minister aware of their findings, recommending a course of action and subsequently holding the Minister accountable for seeing that the committee's recommendations are adopted or justifying why they have not been adopted.

If Deputy Ministers and other public servants are not just *answerable* but also *accountable* for the administration of their departments, they can expect much less anonymity. In that context, public servants would likely take steps to protect themselves from being caught in the middle of partisan politics by documenting their own decisions and actions, as well as all ministerial instructions, in the expectation that they will be called upon by parliamentary committees to provide a rationale for their decisions and to justify their actions.

The absence of public service anonymity that would come with direct public service accountability for administrative matters need not have a negative effect on the integrity of ministerial responsibility. The reason for public service anonymity is to ensure that Ministers are always responsible for the exercise of their authority and powers. *As long as Ministers retain their general executive powers to direct and control their departments, the convention of ministerial responsibility applies.*

The loss of anonymity could, however, affect public servants personally and the health of the public service as an institution. Public servants have traditionally been held to account within the executive-administrative arena, where sanctions or disciplinary steps are not public matters. With direct public service accountability to Parliament, public servants could be chastised by parliamentary committees, with all proceedings captured in an official transcript that is publicly available. (This has already occurred in some instances.) There is obviously the potential for public servants, and the public service in general, to suffer harm in this process. Concerns could be minimized if natural justice protections" were established for public servants who appear before parliamentary committees, especially when their personal conduct is under scrutiny. Such protec-

tions might include the right to counsel, clarification of the conditions under which public servants could refuse to answer a question and the possibility of providing information in private or in secret.

### *Direct Democracy*

Another set of reforms, driven by the notion that the majority of people in the electorate need the right processes to bring weight to bear on how they are governed, is known as "direct democracy." This populist approach certainly affects responsible government.

Populists are convinced that the majority of voters is not represented as strongly as it ought to be in the House of Commons; for example, governing parties that have a majority of seats in the House are supported only by a plurality of the electorate. To remedy this situation, they advocate adoption of mechanisms that would give citizens opportunities to directly affect the laws that govern them by allowing them to initiate legislation, to recall MPs and to vote on measures in referendums.

No doubt direct democracy would result in checks and balances since, at least in principle, it threatens both the government's legislative program and the fate of MPs. Canadian governments have resorted to the use of referendums on deeply important issues. The federal government consulted Canadians on military conscription in 1942 and on the constitutional amendment known as the Charlottetown Accord in 1992, while the Quebec government consulted its electorate on the question of the province's secession from the country in 1980 and 1995.

In terms of responsible government, direct democracy implies that the rule requiring the government to maintain the confidence of a majority of seats in the legislature is sometimes insufficient, particularly when the majority constitutes the members of a governing party elected by a minority of the electorate. It is not, however, inconsistent with the rule. Furthermore, it is possible that electoral reforms that increase the likelihood of governments based on a majority of the popular vote might diminish the perceived need for direct democracy.

### *What Would This Mean for Public Servants?*

Mechanisms of direct democracy could have a direct impact on the public service, especially in the area of policy development. For example, if citizens were able to initiate legislation, public servants would be compelled to look beyond the current, government-dominated legislative agenda and to

view the public not only as the recipients of public services or the subjects of regulations but also as potential legislators who directly affect the public policy agenda, even to decide policy. This would require policy analysts to be more attentive to, and to share policy space with, a wide range of citizens groups, interest groups, think tanks and social movements, as well as to be more attuned to public opinion polls.

### *Consensual Democracy*

A final set of reforms, prompted by the desire for less partisanship and greater consensus in government, takes a different tack than direct democracy. Indeed, those who urge the adoption of the processes of consensual, or deliberative, democracy eschew the rule of the majority as much as they disapprove of competitive party politics. They find the conduct of elected representatives under responsible government to be aggressively partisan and adversarial, and attribute the behaviour to the system itself. In this they are only partly correct; it is the combination of responsible government and party discipline that encourages a competitive, partisan and aggressive style of politics.

Deliberative democrats would prefer a more consensual style of politics, in which individuals engage in meaningful discussion with one another rather than in acrid debates. They want a system in which, at the end of the consultative process, everyone signs on to the negotiated result. It has sometimes been suggested that Nunavut is a working model of such a system.

As noted above, adversarial politics is not a necessary condition of responsible government, as evidenced in Canadian political history. To take an obvious example, in the 1917 election held in the midst of the First World War, the Liberals and Conservatives agreed to run single candidates of the Union government in many ridings. The objective was to shelve ordinary partisanship and work together for the common purpose of prosecuting the war. Politics reverted to partisanship in the next election, in 1921, and nothing like the Union government occurred again. Adversarial politics is definitely the norm.

Whatever the merits of a consensual style of politics, it must be conceded that, at least in theory, a full consensual system that requires complete agreement gives everyone a veto. Arguably, it is the ultimate form of checks and balances. It changes the core rule of responsible government: instead of requiring a majority of elected representatives, a government would require unanimity to continue to govern. (It would also entail an end to the formal opposition.)

Under responsible government, competition between the contenders is itself a check and balance — competition is highly prized in that it ensures that governments change hands. The worry is not that there is too much competition but that there might be too little. *In contrast to consensual democracy, other proposals for reform, whether for free votes, fixed terms or a different electoral system, are ways of making the system more rather than less competitive.* More is better because competition counterbalances the concentration of power, while at the same time continuing to honour the core rule of responsible government. The consensus model of deliberative democracy is not just a challenge to the core rule of responsible government, but an altogether different concept of political life.

### *What Would This Mean for Public Servants?*

The consensus model of government is extremely unlikely to be adopted, but if it were it would dramatically affect the public service. The reason is that even one vote against a piece of legislation constitutes a veto. Policy advisers would need to be particularly adept at determining the interests and concerns of all MPs and at constructing legislation that accommodates the concerns of all, while offending none. The search for the lowest common denominator is a recipe for paralysis in government.

## KEY POINTS TO REMEMBER

*A range of changes has been suggested to introduce more checks and balances into Canada's political system. Responsible government can accommodate almost all of these changes.*

*Some changes could affect the application of the confidence convention of responsible government, which says that the government must maintain the confidence of a majority of seats in the House of Commons. Some changes could make it harder for the government to maintain this confidence.*

*Public servants would be directly and indirectly affected by reforms to Canada's institutional arrangements and political practices. The key impacts could include the need to:*

- *plan for and support more frequent and complex government transitions;*
- *support Ministers within an environment of greater legislative uncertainty;*
- *be more attuned to the legislative agenda of the full range of political parties and actors;*
- *protect public service neutrality through the formalization of protocols for relationships with Ministers and MPs during elections and periods of coalition government formation; and*
- *account personally for departmental administration to parliamentary committees.*

*Given the likelihood of a combination of reforms, the impacts on public servants might well prove to be more complicated and harder to predict than the impacts presented herein.*

* * *

# ENDNOTES

## Introduction: Endnote 1-5

[1] Canada. Privy Council Office. *Governing Responsibly: A Guide for Ministers and Ministers of State*. December, 2003 (*see* http://www.pco-bcp.gc.ca).

[2] Canada. Privy Council Office. *Guidance for Deputy Ministers*. June 20, 2003 (see http://www.pco-bcp.gc.ca).

[3] Canada. Treasury Board Secretariat. *Values and Ethics Code for the Public Service*, June 19, 2003 (*see* http://www.tbs-sct.gc.ca).

[4] *Ibid.*

[5] To learn more about civic literacy, see Henry Milner, *Civic Literacy: How Informed Citizens Make Democracy Work*. Hanover, N.H: University Press of New England, 2002; and Henry Milner, "Civic Literacy in Comparative Context: Why Canadians Should Be Concerned." *Policy Matters*, vol. 2, no. 2, July 2001 (available on-line at http://www.irpp.org/pm/archive/pmvol2no2.pdf). In the latter paper, Milner states that with respect to Canadians, "There appears to have been a significant decline in the level of political knowledge in the last 10 to 15 years" (p. 8).

## Part 1: Endnote 6 and 7

[6] A. H. Birch. *Representative and Responsible Government* (Toronto: University of Toronto Press, 1964), p. 237.

[7] *The Federalist*, no. 49, p. 362-67.

## Part 2: Endnote 8-31

[8] S. L. Sutherland, "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem," *Canadian Journal of Political Science*, 24:1 (March 1991), p. 96–97.

[9] *Ibid.*, p. 100.

[10] Canada, Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, December, 2003, p. 5-6 (*see* http://www.pco-bcp.gc.ca).

[11] Nicholas d'Ombrain, "Alternative Service Delivery: Governance, Management and Practice," in *Change, Governance and Public Management* (Ottawa: Public Policy Forum, 2000), p. 153.

[12] S. L. Sutherland, *op. cit.*, p. 104–05.

[13] Colin Campbell, "Cabinet committees in Canada: pressures and dysfunctions stemming from the representational imperative," in Thomas T. Mackie and Brian W. Hogwood (eds.), *Unlocking the Cabinet: Cabinet Structures in Comparative Perspective* (London: Sage, 1985), p. 61–85; and Herman Bakvis, *Regional Ministers: Power and Influence in the Canadian Cabinet* (Toronto: University of Toronto Press, 1991).

[14] S. L. Sutherland, *op. cit.*, p. 96.

[15] John Reid, "Reviewing the Access to Information Act," *Canadian Parliamentary Review*, vol. 22, no. 1 (Spring), p. 8–10.

[16] R. MacGregor Dawson, *The Government of Canada*, 4th ed., revised by Norman Ward (Toronto: University of Toronto Press, 1963), p. 190–91.

[17] J. R. Mallory, *The Structure of Canadian Government*, rev. ed. (Toronto: Gage Publishing Limited, 1984), p. 136.

[18] Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics* (Toronto: Oxford University Press, 1991), see especially p. 48–75.

[19] Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003.

[20] S. L. Sutherland, *op.cit.*

[21] Quoted in S. L. Sutherland, *op. cit.*, p. 111.

[22] *Report of the Special Committee on Reform of the House of Commons*, James A. McGrath (Chairman), June 1985, p. 1.

[23] *Ibid.*, p. 20.

[24] *See* S.L. Sutherland, "The Al-Mashat Affair: Administrative Accountability

in Parliamentary Institutions," *Canadian Public Administration* 34:4 (Winter 1991).

[7] Canada, House of Commons, Public Accounts Committee, Report 10, March 20, 2003.

[8] Canada, Office of the Prime Minister, "Strengthening Public Service Management and Accountability for Public Funds," June 11, 2002.

[9] Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003, p. 15 .

[10] *Ibid.*, p. 15.

[11] Canada, Privy Council Office, *Responsibility in the Constitution*, June 1, 1993 (see http://www.pco-bcp.gc.ca).

[12] *Ibid.*, p. 75.

[13] Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003, p. 15.

## Part 3: Endnote 32-37

[32] See, for example, "Chat with Allan Fotheringham," *CNEWS*, November 7, 2001 (see http://www.canoe.ca/CNEWSNewsmakers0111/07_fotheringham-can.html). Others have used the term "friendly dictatorship." See, for example, Jeffrey Simpson, *The Friendly Dictatorship* (Toronto: McClelland and Stewart, 2001).

[33] A. H. Birch, *Representative and Responsible Government* (Toronto: University of Toronto Press, 1964), p. 135–36.

[34] Eugene Forsey ,"Constitutional Monarchy and the Provinces," *Freedom and Order: Collected Essays* (Toronto: McClelland and Stewart Limited, 1974), p. 30.

[35] Joseph Howe, "Joseph Howe to Lord John Russell," in W.P.M. Kennedy, ed., *Statutes, Treaties and Documents of the Canadian Constitution, 1713–1929*, 2nd ed., (Toronto: University Press, 1930), p. 407.

[36] See for example, R. MacGregor Dawson, *The Government of Canada*, 4th ed., revised by Norman Ward (Toronto: University of Toronto Press, 1963), p. 492

[37] Joel Krieger, "Britain," in Mark Kesselman, Joel Krieger and William A. Joseph, *Comparative Politics at the Crossroads* (Lexington Massachusetts and Toronto: D. C. Heath and Company, 1996), p. 78.

## Part 4: Endnote 38-41

[38] Denis Smith, "President and Parliament: The Transformation of

Parliamentary Government in Canada," in Tom Hockin, ed., *Apex of Power: The Prime Minister and Political Leadership in Canada, 2nd* ed. (Scarborough: Prentice-Hall, 1977), p. 308–25.

[7] For further information, see Canada, Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, December 2003, p. 16 (see http://www.pco-bcp.gc.ca).

[8] Peter Aucoin, *The New Public Management: Canada in Comparative Perspective* (Montreal: Institute for Research on Public Policy, 1996).

[9] The issue of natural justice protections is addressed by the New Zealand government through the State Services Commission (see http://www.ssc.govt.nz) and the publication *Natural Justice Before Select Committees: A Guide for Witnesses* published by the Office of the Clerk of the House of Representatives (see http://www.clerk.parliament.govt.nz).

# APPENDIX I:
# GLOSSARY OF TERMS

These definitions have been created to assist readers who are new to this subject matter. They are intended for specific use with this publication and are not endorsed by the Government of Canada.

ACCOUNTABILITY: to justify, explain or defend one's actions (or those of one's subordinates) based on powers and responsibilities bestowed by a superior authority. The account may encompass a statement of any necessary corrective action to be taken. The superior authority has the obligation to hold to account all those on whom it has bestowed powers and responsibilities.

ANSWERABILITY: implies a duty to provide information or factual explanation, not to defend or justify.

BACKBENCHER: a member of the legislature who is not a party leader, a Minister of the governing party or an opposition critic ("frontbenchers"). The term "benches" refers to the seating plan in the British House of Commons where members sit on benches in rows.

CABINET: the political executive. In Canada, the Cabinet consists of the Prime Minister and the Ministers he or she appoints to Cabinet. Each Cabinet Minister usually is responsible for a particular portfolio, such as health, finance or justice. Legally, the Cabinet functions as the active committee of the Privy Council. The Cabinet, as the executive, is responsible to the House of Commons and, under our system of

responsible government, requires the confidence of the legislature to govern.

CAUCUS: the members of a party who hold a seat in Parliament or appointees of a party that hold a seat in the Senate. There may also be sub-units of the caucus, such as a regional caucus or a women's caucus.

CHECKS AND BALANCES: the dispersal of political powers among branches of government so that no single one dominates the rest. The desired result is that power is balanced and that the integrity of each institution remains intact.

CONFIDENCE CONVENTION: responsible government requires that the government have the confidence of the majority of seats in the House of Commons. If defeated on a vote taken in the House, the Prime Minister and Cabinet must either resign or call an election. Not all pieces of legislation are issues of confidence, however. A government may designate a particular piece of legislation to be a "non-confidence" motion, which means that the House's rejection of the bill will not be interpreted as a rejection of the government. All major financial matters are deemed to be confidence motions.

CONSTITUTION: Canada's written constitution is the *Constitution Act, 1867*. It vests executive power in the Queen, with authority to be exercised on the advice of the Queen's Privy Council for Canada. It also provides for one Parliament of Canada, consisting of the Queen, the Senate and the House of Commons, and makes specific provisions for the exercise of legislative power. This legal structure is modified by the democratic convention of responsible government.

CONSTITUTIONAL CONVENTION: unwritten rules or principles of the constitution that are accepted by the "body politic" and by citizens, especially those who hold elected and appointed office.

CROWN: the head of state in whom sovereign power resides, in light of the fact that Canada remains part of the British Commonwealth. The Queen is the monarch of Canada, and the Governor General represents her in Canada.

DEMOCRACY: a form of government in which the people have a say, either directly or indirectly, in how they are governed.

DIRECT DEMOCRACY: a form of government in which all citizens are expected to take part in the governing process. An example of an exercise in direct democracy is a referendum.

**Executive:** the written constitution (*Constitution Act, 1867*) vests executive government in the Queen, with authority to be exercised by the Governor General on the advice of the Queen's Privy Council for Canada. Functionally, Ministers exercise the executive powers assigned to the Crown under the written constitution and by ordinary law. Formally, Ministers "advise" the Crown, and the Crown must accept their advice.

**Extra-parliamentary party:** the association that encompasses all members of a political party and not only the members who are Members of Parliament. This extra-parliamentary party chooses the party leader.

**Federal system:** at least two levels of government, each of which has its own set of legislative responsibilities that is beyond the reach of the other level. Canada has a federal system under which there are the federal and provincial levels of government as well as Aboriginal self-government.

**First-past-the-post:** an electoral system in which electoral candidates must gain a plurality of votes, that is, the most votes (not necessarily a majority). When the electorate is divided into districts with each one electing one representative, this system is called the single-member plurality system (SMP).

**Governor General:** the Queen's representative in Canada who is appointed by the Queen on the advice of the Prime Minister, usually for a period of five years. The Governor General exercises executive powers on the advice and consent of the Queen's Privy Council in Canada, the active part of which is the Prime Minister and Cabinet. The Governor General has reserve powers and personal prerogatives, exercised only to preserve the confidence convention of responsible government.

**Governor in Council:** the Governor General acting on the advice of the Privy Council, that is, the Prime Minister and Cabinet. The signature of the Governor General gives legal force to all executive orders put forward by the Prime Minister and Cabinet.

**Head of government:** the Prime Minister is the head of government. The Prime Minister appoints, assigns and dismisses Ministers and chairs the Cabinet.

**Head of state:** the Queen is sovereign. The Governor General exercises the Queen's powers when she is not present. The role of the Queen and her representative in Canadian government is essentially ceremonial, except for the Governor General's responsibility to ensure adherence by the Prime

Minister to the confidence convention of responsible government.

HOUSE OF COMMONS: consists of 301 members,* each elected in a single-member electoral district. The House of Commons is the lower chamber of Canada's bicameral legislature (a legislature consisting of both an upper and a lower house) and the Senate is the upper chamber. All legislation relating to the raising and spending of public money must originate in the House of Commons.

MINISTERIAL RESPONSIBILITY: the constitutional convention in which individual Cabinet Ministers are legally and politically responsible for their actions and decisions as well as those of their officials.

MINISTRY: the entire body of Ministers in the government, encompassing Cabinet Ministers and Ministers not in the Cabinet (in some provinces, the term refers to a Minister's portfolio or department.)

MONARCH: in Canada, the monarch is hereditary and is the country's head of state.

OFFICIAL OPPOSITION: the members of the party that has the largest number of seats in the House of Commons and is not in government. The leader of this party is recognized as the Leader of the Official Opposition. The official opposition and all other parties and independents in the House of Commons that are not in government constitute the opposition.

ORDER-IN-COUNCIL: an executive decision that is drafted by the Cabinet and given legal force by the Governor General's signature. Orders in Council may be appointments or regulations made under the authority of a statute.

PARLIAMENTARY SYSTEM OF GOVERNMENT: a system in which the executive government consists of a Prime Minister and Cabinet, who also sit in the House of Commons. The Prime Minister and Cabinet must maintain the confidence of a majority of seats in the House of Commons to govern.

PARTY DISCIPLINE: the members of a party who hold seats in the House of Commons act as a disciplined group under the direction of their party leader. The party leader, especially when Prime Minister, uses rewards and sanctions to secure adherence to the party policy. The use of party discipline helps protect a government from

defeat in the House of Commons by ensuring the confidence of at least its own caucus. It thereby restricts the freedom of elected members of the governing party to criticize the decisions of the Cabinet or to voice the concerns of their constituents if they differ from the government's position.

Parliamentary committees: committees of the Senate and the House of Commons. The composition of the committees is expected to reflect the composition of political parties in the House or Senate. These committees review government bills, spending estimates and operations.

Political party: an organization that nominates and supports candidates in electoral districts. Political parties endorse a particular program and attempt to attract voters to support their candidates. Political parties are not a required part of parliamentary government, but have become a critical mechanism in its operation.

Private member: any member of the House of Commons who is not a Minister.

Private member's bill: a bill introduced in the House of Commons by a member who is not a Minister of the government. Less time is allotted by the House to the consideration of these bills than is allotted to government bills and few private members' bills become law.

Privy Council: the body appointed by the Governor General on the advice of the Prime Minister, the active part of which is the Prime Minister and Cabinet. The complete Privy Council consists of current and former Cabinet Ministers, speakers of the House of Commons, speakers of the Senate, Supreme Court chief justices, provincial premiers and other distinguished persons selected by the Prime Minister. The complete body rarely meets and only for ceremonial functions.

Proportional representation (PR): any electoral system in which the percentage of seats won by political parties in a legislative body, such as the House of Commons, is proportional to the percentage of the total vote they have received in an election.

Question Period: a 45-minute session held every afternoon in the Canadian House of Commons during which private members direct questions at the Prime Minister and Cabinet Ministers who must defend their decisions. The media allocate considerable time to the coverage of Question Period, which in Canada is considered a primary mechanism to hold Ministers to account, especially by the opposition.

REFERENDUM: a decision-making exercise in direct democracy whereby citizens are asked at least to vote "yes" or "no" to a question in the form of a ballot. The results of a referendum may or may not be binding on a government.

REPRESENTATIVE DEMOCRACY: a democracy in which the public will is expressed and defined by representatives who are elected by the people directly.

RESPONSIBLE GOVERNMENT: the rule that the government (consisting of the Prime Minister and the Cabinet) must have the confidence of a majority of seats in the House of Commons to govern. It makes parliamentary government democratic because the political executive is responsible to elected representatives in the House of Commons. If the government loses the confidence of the House, it must either resign or call an election.

ROYAL PREROGATIVE: the powers of the Crown, almost all of which are exercised under responsible government by the Prime Minister.

SINGLE-MEMBER-PLURALITY (SMP): see first-past-the-post.

SOVEREIGN: the head of state. This term does not refer to the Governor General, but to the Queen, who at present is Her Majesty Queen Elizabeth II.

UNITARY SYSTEM: a system of government with only one order or level of government. For instance, New Zealand has only a central government.

WESTMINSTER-STYLE SYSTEM: the form of government modelled after the parliamentary system in the United Kingdom. "Westminster" refers to the palace where Parliament meets in England.

# APPENDIX II:
# QUICK FACTS ON EXECUTIVE GOVERNMENT AND PARLIAMENT

These facts are provided to assist readers who are new to this subject matter.

## Executive Government

*Constitution Act 1867*

- Executive powers vested in the Queen
- Executive powers exercised by the Governor General alone or with the advice of the Queen's Privy Council
- Governor General appointed by the Queen
- Privy Council appointed by the Governor General

*Responsible Government*

- Executive powers exercised by the Prime Minister alone, or by the Prime Minister and Cabinet
- Government (consisting of the Prime Minister and Cabinet) requires the confidence of the House of Commons
- Loss of confidence = Government resigns or general election
- Governor General ensures the Prime Minister respects the confidence convention

*Prime Minister*

- Forms and heads the government as leader of the political party that commands the confidence of a majority of seats in the House of Commons
- Appoints and dismisses Ministers
- Appoints federal judges and Senators
- Decides when to hold elections

*Cabinet*

- Functions legally as the Privy Council advising the Governor General
- Prime Minister assigns portfolios to Cabinet Ministers
- Prime Minister appoints junior Ministers to assist individual Cabinet Ministers
- Cabinet Ministers are politically and legally responsible for portfolios
- Legislation to raise or spend public money must be introduced by a Minister
- Prime Minister determines Cabinet structure, procedures and agenda

## Parliament

*The Queen*

- Governor General gives royal assent to legislation as advised by the government
- Ministers, on behalf of the Crown, introduce all legislation related to taxation and spending

*The House of Commons*

- 301* elected Members of Parliament (MPs)
- Seats are allocated to provinces on basis of proportionate population
- MPs elected from single-member electoral districts
- Candidate with most votes (plurality) wins the seat
- The maximum term of a House of Commons is five years
- MPs usually represent political parties and vote according to party position
- House is divided into government and opposition
- The largest party in the opposition is the official opposition

*The Senate*

- 105 members appointed by the Prime Minister
- Seats are allocated equally to four regional divisions of Canada
- Senators must retire by the age of 75
- Senate approval is required for all legislation but Senate defers to the House of Commons
- Senate is not involved in confidence convention of responsible government

*The number of electoral districts and thus seats in the House of Commons will soon increase to 308, with three additional seats going to Ontario, two additional seats to Alberta, and two additional seats to British Columbia. For more information about electoral boundaries and representation in the House of Commons, please see Elections Canada's Web site at http://www.elections.ca/.

# APPENDIX III:
# ADDITIONAL RESOURCES*

## Documents

Canada, Privy Council Office, *A Guide Book for Heads of Agencies: Operations, Structures and Responsibilities in the Federal Government*, August 1999.

This guide is intended to assist heads of federal agencies, including heads of boards and commissions, and particularly those newly appointed by the Governor in Council (it is not directed specifically toward heads of Crown corporations). It explains the role heads of agencies are called to play. It can be accessed electronically at http://www.pco-bcp.gc.ca

Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003.

This publication is intended to clarify how Deputy Ministers fulfil their role in the Government of Canada. This guidance builds on two publications of the Privy Council Office, namely *The Office of Deputy Minister* (1987) and *Responsibility in the Constitution* (1993). It can be accessed electronically at http://www.pco-bcp.gc.ca

Canada, Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, December, 2003.

This guide sets out the duties and responsibilities of the Prime Minister,

*The summaries of documents and courses in this section have been drawn largely from the original sources with the approval of the responsible author/sponsoring organization.

Ministers, Ministers of State and Parliamentary Secretaries. It also outlines key principles of responsible government in Canada, and the government's approach to democratic reform. It can be accessed electronically at http://www.pco-bcp.gc.ca

Canada, Privy Council Office, *Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees*, December 1990.

This document has been prepared for the guidance of officials appearing before parliamentary committees. It sets out the constitutional principles that underlie relationships among Ministers, officials and Parliament. It can be accessed electronically at http://www.pco-bcp.gc.ca

Canada, *Privy Council Office, Responsibility in the Constitution*, Ottawa, 1993.

This authoritative account addresses the history and foundations of Canada's system of responsible government. Written in 1977 and reissued in 1993, it addresses the essentials of parliamentary government, describes the constitutional system within which ministerial government operates and explains the nature of the *personal* responsibility and accountability of Ministers and senior public servants. It can be accessed electronically at http://www.pco-bcp.gc.ca

Canada, Treasury Board Secretariat, *TBS Management Accountability Framework*, 2003.

The Treasury Board of Canada Secretariat (TBS) Management Accountability Framework provides deputy heads and all public service managers with a list of management expectations that reflect the different elements of current management responsibilities. It can be accessed electronically at http://www.tbs-sct.gc.ca

Canada, Treasury Board Secretariat, *Values and Ethics Code for the Public Service*, 2003.

This Code sets forth the values and ethics of public service to guide and support public servants in all their professional activities. The Code sets out public service values, as well as conflict-of-interest and post-employment measures, and should be read in the context of the duties and responsibilities set out in *A Guide for Ministers and Ministers of State*. It can be accessed electronically at http://www.tbs-sct.gc.ca

Eugene Forsey, *How Canadians Govern Themselves* (5th ed.) (Ottawa: Library of Parliament, 2003).

This is a very accessible primer for those wanting to learning about the breadth of Canada's parliamentary system, including the Fathers of Confederation, Canada's democratic institutions, the constitution and even provincial and municipal powers. It can be accessed electronically at http://www.parl.gc.ca

## Courses

Campus Direct, *Responsible Government: Responsibility and Accountability*

This e-learning course provides an overview of the concept of responsible government and what it means for public service managers. It is designed for all managers in the public service who want to learn about responsible government to better understand the challenges involved in applying the principles of responsibility and accountability in their work. It can be purchased and accessed electronically at http://www.campusdirect.gc.ca

Canadian Centre for Management Development, *How Ottawa Works*

This course provides participants with an opportunity, through a combination of speakers and the use of an actual piece of legislation, to explore "how Ottawa works" and to see what actually happens behind the scenes. During the course, participants discuss the political infrastructure, review the government process (including Cabinet committees) and follow the legislative aspects of how a bill is approved. For more information, go to http://www.ccmd-ccg.gc.ca

Canadian Centre for Management Development, *Structures and Operations of Government: Challenges for Accountability*

This course focuses on the principles of accountability and how they are challenged by the need to govern within the framework of Canada's parliamentary regime while, at the same time, new ways of serving Canadians are being explored. The course allows participants to probe, at a macro level, the fundamental principles of the Canadian regime and its major political institutions, and to compare them with those of other regimes. For more information, go to http://www.ccmd-ccg.gc.ca

*"A first-rate primer on our system of government: practical, informed, judicious, authoritative and a pleasure to read. It provides a needed historical and comparative perspective and corrects many false assumptions. The authors show the flexibility of a parliamentary system and how it can evolve without losing the core of responsible government.*

*Should be required reading for all public servants, veterans as well as new recruits."*

Ralph Heintzman, Vice-President, Public Service Values and Ethics, Office of Public Service Values and Ethics, Public Service Human Resources Management Agency of Canada

*"Concepts such as ministerial responsibility and the accountability of officials most commonly come to public attention in an environment of political combat. The authors have performed a useful service in dispelling some prevalent myths and providing an informative account of how responsible government actually works."*

Arthur Kroeger, C.C.
(former Deputy Minister)

*"I enjoyed reading this well-written and -argued piece. The authors are clear on the points they wish to make and do an excellent job of backing up their central theses with examples both historic and comparative. It is a first-rate piece of scholarship".*

David Docherty, Ph.D., Chair, Department of Political Science, Wilfrid Laurier University

* * *

## ABOUT THE AUTHORS

**Peter Aucoin** is Eric Dennis Memorial Professor of Government and Political Science and Professor of Public Administration at Dalhousie University, and a Senior Academic Fellow at the Canadian Centre for Management Development.

**Jennifer Smith** is a Professor of Political Science and Chair of the Political Science Department at Dalhousie University.

**Geoff Dinsdale** is Head of the Governance Research Program at the Canadian Centre for Management Development.